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# Field Level Governance and the Emergence of New Organizational Forms:
## The Case of Multidisciplinary Practices in Law

by

Roy Robert Suddaby ©

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Doctor of Philosophy

in

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# Abstract

This research seeks to understand how change occurs in highly institutionalized settings. More specifically, it examines the processes by which new organizational forms emerge in a changing organizational field. The empirical context is the emergence of multidisciplinary practices in the legal profession in North America. The theoretical context is the role of governance mechanisms or dominant modes of social control in shaping institutional change within an organizational field. The research presents a case study of the emergence of the first captive law firm in North America and the efforts to create and legitimate multidisciplinary professional partnerships.

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# CHAPTER ONE

# OVERVIEW AND RESEARCH QUESTION

## Introduction

Where do new organizational forms come from? Efforts to answer this deceptively simple question have formed the implicit basis of much of what has come to be called organization theory. Max Weber (1910) posed the question as he described how the bureaucratic organization came to displace family and community-based organizations in industrial society. Burns and Stalker (1961), similarly, questioned how a new 'organic' form of organization came to displace the 'mechanistic/bureaucratic' form originally identified by Weber. Contingency theorists used the varying pressures of a changing task environment to describe alterations in organizational form (Lawrence and Lorsch, 1967). Williamson (1975), similarly, tried to understand how hierarchical forms of organization emerge from the turbulence of open markets. And early population ecologists relied on an implicit assumption of new organizational form creation in their fundamental evolutionary dynamic of 'variation-selection-and-retention' (Hannan and Freeman, 1989). The question of where and how new organizational forms are created is, therefore, central to organization theory.

Perhaps the most compelling justification for asking this question arises from the manifest appreciation that the process by which new organizational forms are created is inextricably linked to understanding macro-level organizational change. There is a growing awareness that organizational change can vary, both in intensity and expression (Greenwood and Hinings, 1996). While much of what is experienced as organizational change may be described as incremental and evolutionary, the sudden emergence of a drastically different form of organizing represents an extreme illustration of both radical and revolutionary change (Greenwood and Hinings, 1996). Extreme examples offer ideal opportunities for analyzing and understanding social situations (Denzin, 1989). Understanding how dramatically new forms of organization emerge, therefore, holds the promise of revealing insights into how radical forms of organizational change occur.

In spite of the broad acknowledgement of the importance of understanding how new organizational forms are created (e.g., Aldrich, 1999, Aldrich and Fiol, 1994; Astley, 1985; Fombrun, 1988; Romanelli, 1991; DiMaggio, 1988), the question remains, largely, unresolved. As Romanelli (1991:79) observes:

> "[A] large body of literature has emerged to consider how new forms of organization arise and become established in an organizational community. The literature represents a wide array of theoretical perspectives, and no emerging consensus or dominant theme can plausibly be identified. No long stream of research has been produced to validate the arguments of any perspective. What we find, instead, is a disparate group of mostly nascent theories from organizational ecology, economics, institutional sociology, strategic management and others, all seeking to explicate the nature of contexts and processes that may generate new organizational forms."

The general failure of organization theory to adequately address this fundamental issue has prompted critics to ask, "Where are the theories for new organizational forms?" (Daft and Lewin, 1993).

This study seeks to correct this deficiency by empirically examining the emergence of a new organizational form-the establishment of multidisciplinary partnerships in the legal profession. The multidisciplinary partnership ("MDP") refers to organizations which house practitioners from a variety of professions, primarily lawyers, accountants, engineers and management consultants. The emergence of MDPs has been accompanied by a series of related phenomena amongst professional business advisory firms; the rapid growth in size of professional service firms, the creation of limited liability partnerships (LLPs), a legal structure which combines elements of traditional partnerships and modern corporations, and a shift in ideology which characterizes contemporary legal practice as more a business than a profession. The emergence of MDPs represents a significant change in the archetype of professional organization

(Greenwood, Hinings and Brown, 1990; Cooper, Hinings, Greenwood and Brown, 1996) and has generated considerable debate and resistance within the legal profession. Because MDPs are the primary organizational vehicle for large accounting and consulting firms, they represent a significant jurisdictional threat to lawyers' professional 'project' (Abbott, 1988).

MDPs represent a substantial deviation in organizational form and practice in the context of a mature and highly institutionalized professional field. As such, they afford an opportunity to study the mechanics by which new organizational forms are created and legitimated within an organizational community. I propose to use institutional theory to analyze the emergence of this new organizational form. In the remaining sections of this chapter I, first, justify my use of institutional theory as an appropriate theoretical lens to observe and analyze this phenomenon. Second, I provide an overview of the conceptual framework that will be used to answer this question. The conceptual framework is drawn from institutional theory and is developed in greater detail in Chapter Two. Finally, I provide a brief overview of, and justification for, the chosen site of this study, the legal profession in North America.

### Why is institutional theory suited to understanding the emergence of new organizational forms?

The question of how new organizational forms occur was once considered the primary domain of population ecology (Hannan and Freeman, 1989; Romanelli, 1991). The ecological model, however, has experienced considerable difficulty in explicating the dynamics by which a new organizational form is created. Increasingly, ecological researchers are moving toward an "emergent social systems" perspective (Romanelli, 1991), drawn primarily from institutional theory (Baum and Powell, 1995), to understand the dynamics by which new organizational form are produced. Each of these theoretical perspectives is elaborated in detail below.

**Population ecology**

"Speciation" is the term given, by population ecologists, to the process by which new kinds of organizational structures and practices emerge from pre-existing ones (Hannan and Freeman, 1989; DiMaggio, 1994). Efforts to explain precisely *how* speciation occurs, however, have been hampered by population ecologists' stubborn insistence that individual organizations are incapable of change. The notion of "structural inertia" assumes that individual organizations are bound by internal rigidities, routines and habits which prevent adaptation (Hannan and Freeman, 1989). Variation of organizational form is presumed to occur at the population level, whereby shifts in the environment are thought to cause the selection of entire populations of organizations. Speciation, therefore, is presumed to occur only at the level of the population.

There are two fundamental problems with this explanation, however; one theoretical and the other empirical. Theoretically, the assumption that speciation occurs at the population level fails to answer the question of *how* that might occur, given that individual organizations cannot adapt. It simply defers the question to a higher level of analysis and treats the mechanics of speciation as a theoretical 'black box'. The empirical problem is that in our everyday experience we are inundated with a myriad of illustrative examples of individual organizations that *do* adapt. Banks change to sell insurance, fast-food companies manufacture and sell toys and accounting firms become management consulting organizations. The argument of structural inertia, particularly in contemporary time, defies our day-to-day experience of organizational transformation.

Another limitation of population ecology's capacity to analyze new organizational forms rests with difficulties in defining the boundaries of a population (DiMaggio, 1994). A fine-grained analysis of most populations reveals a variety of sub-populations or sub-species which, often, are better described as 'communities of organizations' which can be analyzed in their own right (DiMaggio, 1994). Moreover, there is considerable doubt that the population is the unit of competitive selection (Young, 1988; Donaldson, 1995). DiMaggio (1994:445) argues that most community level evolution occurs "not just by speciation but through the effacement of boundaries between competing populations." That is, organizational forms are not 'selected' so much as they are 'merged' or 'integrated' as the regulatory and social distinctions between them disappear. Thus, banks begin to sell insurance and retail grocery stores offer mortgages.

Because population ecology has been unable to provide satisfactory explanations of *how* speciation might occur, researchers have had to rely on methodological proxies such as 'foundings' to describe incidents of new organizational form creation, and 'density' to describe the legitimation of new organizational forms in a community or field. The inadequacies of these proxies have generated considerable criticism (Donaldson, 1995; Baum and Powell, 1995; Zucker, 1989;Young, 1988). Much of this criticism has focused on the relatively naive view of the role of legitimacy, within population ecology, as new organizational forms become established. Baum and Powell (1995) observe that ecologists have appropriated institutional reasoning to describe speciation but have been unable or unwilling to capture the institutional dynamics by which new organizational forms emerge and gain acceptance.

Because population ecology has failed to capture the dynamics of new form creation, researchers have moved, methodologically, from early efforts to understand the competitive dynamics of competing species (Beard, 1993) to focus, more narrowly, on resource competition within a single population (Baum and Singh, 1994). Notions about the creation of new organizational forms have been conflated to measures of organizational foundings within a species or, alternatively, observations of the spatial variation of pre-existing organizational forms in different resource environments. As a result, research in population ecology has drifted away from early efforts to understand how inter-population competition produces new organizational forms.

## Institutional Theory

For early social theorists, such as Weber and Durkheim, the answer to the question of where new organizational forms come from rested in understanding institutions. Bureaucracies, which form the prototype of contemporary organizational forms, were the product of institutional drives to social order, according to Durkheim (1933), or to social efficiency, according to Weber (1910). Early organizational theorists, similarly, underscore the important role played by institutional processes in creating new forms of organizing. Parsons (1966), for example, points to institutional variables, such as legitimation and role differentiation, in explaining the growth of modern bureaucracies. This argument has been echoed, more recently, by organizational ecologists who state that a new organizational form is created when "no question arises in the minds of actors that a certain form is the natural way to effect some kind of collective action (Hannan and Freeman, 1989:56)" and who observe that institutional theory is the theoretical paradigm that offers the most detailed explanation of such processes of legitimation (Baum and Powell, 1995).

In spite of this general agreement about the importance of institutions and institutional processes in the creation of new organizational forms, contemporary institutional theory has largely avoided the question of where these forms come from and how they are established in an organizational community. Instead, institutional theory has come to focus on the convergence of distinct organizational forms and, rather than examining organizational heterogeneity, asks as its central question, "why is there such startling homogeneity of organizational forms and practices?" (DiMaggio and Powell, 1983:64). Empirical research in institutional theory has emphasized processes of isomorphic change and has become "far less effective in generating ideas about why particular kinds of forms are chosen over possible alternatives, and why organizational forms change over time and in particular directions" (Brint and Karabel, 1991:343).

In fact, the bulk of recognition of the potential contribution of institutional theory toward understanding the creation of new organizational forms comes from theorists in population ecology. Arguing for a more explicit union between population ecology and institutional theory, these writers (see, for example, Lounsbury, 1999; Baum and Powell, 1995) suggest that institutional theory can further our understanding of how new organizational forms arise in two fundamental ways. First, institutional theory has a *broader conceptual basis* that is more sensitive to the cultural and social contexts within which constructs like 'legitimacy' may be analyzed. Second, institutional theory has a unit of analysis, *the organizational field*, which offers the potential of overcoming many of the shortcomings of the population ecology perspective as well as a more dynamic conceptualization of organizational interaction. Each of these observations is detailed below.

*Broader conceptual basis:* In contrast to population ecology, which arose as a predominantly methodological approach to understanding the dynamics of resource competition between organizations (Hannan and Freeman, 1989), institutional theory has emphasized the broader social and cultural contexts within which organizational action occurs (Brint and Karabel, 1991; DiMaggio and Powell, 1991). One important consequence of this difference in emphasis is the observation that institutional theory has a more sophisticated and nuanced view of legitimacy than does population ecology (Baum and Powell, 1995; Hybells, 1995; Zucker, 1989). Rather than simply using measures of density as a proxy for legitimacy, for example, institutional theorists have developed detailed analyses of legitimacy projects amongst organizations including impression management (Elsbach, 1994), political behavior (Jennings and Zandbergen, 1995) and symbolic action (Brown, 1995; Neilsen and Rao, 1987). Because legitimation is assumed to be an important part of the process of establishing a new organizational form (Hannan and Freeman, 1989; DiMaggio, 1994), a sophisticated conceptualization of the process of legitimation is a necessary theoretical prerequisite for studying the emergence of new forms.

Institutional theory also holds the promise, if not the realization, of allowing for agency by social actors in the process by which new organizational forms are created. Although institutionalists have often been criticized for an overly deterministic view of social behavior (DiMaggio and Powell, 1991), much of this criticism is unwarranted (Scott, 1995). In fact, institutional theory offers the conceptual apparatus to explain willful action (Oliver, 1991; DiMaggio, 1988); however, empirical research has not yet had the time to explore these avenues. One particular construct, which holds much potential for explaining new organizational form creation, is the notion of "institutional entrepreneurs" (DiMaggio, 1988). This argument suggests that new organizational forms are, in effect, the bi-product of willful social actors who reconfigure markets. This is in contrast to the population ecologist's assumption that environments select populations. Rather, according to Van de Ven and Garud (1989:205), "environmental niches do not pre-exist...they are socially constructed domains through the opportunistic and collective efforts of interdependent actors in common pursuit of a technological innovation."

Finally, the broader social and cultural perspective of institutional theory effectively brings more variables to bear on the process of new organizational form creation. Some writers, for example, suggest that changes in organizational form are an epi-phenomenon of macro-social changes in belief systems, societal values or interpretive schemes (Greenwood and Hinings, 1996). Changes in interpretive schemes create subsidiary changes in resource structures, which, in turn, affect notions of legitimacy and taken for granted assumptions about appropriate organizational forms and practices (Reuf and Scott, 1998). These changes, similarly, create opportunities for entrepreneurial social actors to challenge and modify extant organizational forms.

*Unit of Analysis-The Organizational Field:* The second attraction of institutional approaches for understanding the emergence of new organizational forms is its attention to the 'field' level of analysis. New organizational forms represent a unique form of institutional change. The notion of institutional change and its effects upon the development of new organizational forms is inextricably linked with the field level of analysis. DiMaggio (1991:267), in his analysis of the emergence of contemporary forms of US art museums, observes that "in order to understand the institutionalization of organizational *forms*, we must first understand the institutionalization and structuring of organizational *fields*." There are a variety of justifications, both theoretical and practical, for the necessary linkage between organizational fields, institutional change and the emergence of new organizational forms. These justifications are detailed below.

The term 'organizational field' refers to a "community of organizations that partakes of a common meaning system and whose participants interact more frequently and fatefully with one another than with actors outside the field" (Scott, 1994:207-8). As such, the term carries both structural and symbolic connotations which, depending upon the circumstances, may be both broader in scope, and yet more analytically precise, than traditional units of analysis such as 'business sector' or 'industry'. By using relational or network terms such as 'frequent and fateful' interaction, for example, organizational fields incorporate social actors who usually stand outside an industry, such as regulators, consumer interest groups and "other organizations that produce similar services or products" (DiMaggio and Powell, 1983:143). The structural boundaries of organizational fields are, therefore, broader than either industries or populations and allow analysis of both competitive and *non-competitive* relations between actors. The importance of non-competitive relations between social actors is one of the defining characteristics of institutional theory (Selznick, 1949:260; DiMaggio and Powell, 1991:13) and any attempt to understand institutional change and the development of new organizational forms must also be informed by an analysis of relations which fall outside of strictly competitive behaviour.

The concept of organizational fields also holds an ideational or symbolic component (Scott, 1995). That is, fields involve shared meaning systems between social actors. These meaning systems may include a common language, shared values and norms and common taken for granted assumptions about appropriate forms of organization. Increasingly, organizational fields are viewed as forming around issues and ideologies rather than markets or technologies (Hoffman, 1999). Organizational fields have, alternately, been described as "arenas of power relations" (Brint and Karabel, 1991:355), centers of "political negotiation and debate" (Jennings and Zandbergen, 1995) or communities based upon "common meaning systems" (Scott, 1995:56). Introducing notions of power, politics and symbolic interaction into our conceptualization of organizational fields makes the construct more amenable to addressing issues of new organizational form creation than do traditional concepts like population or industry because they provide a more sophisticated and nuanced view of the social processes, such as legitimation and adoption of innovations, that underpin the diffusion of a new organizational form.

A final characteristic of organizational fields which serves to make it an appropriate unit of analysis for understanding how new organizational forms arise is the observation that fields, which represent a level of analysis somewhere between populations of organizations and society (Scott, 1995:57), are socially embedded systems. In this sense, fields represent a single level in a series of 'nested social systems' extending from organizational sub-systems (Buroway, 1979) to world society (Meyer, 1980). There is increasing awareness that organizational change, particularly that type of change associated with the creation of new organizational forms, involves a process of 'co-evolution' (Campbell, Hollingsworth and Lindbergh, 1991; Lounsbury, 1999) wherein new organizational forms are a bi-product of macro-social changes which affect both populations and society. The creation of new organizational forms, therefore, is accompanied by broader level change in social and political institutions (Eisenstadt, 1968; Brint and Karabel, 1991).

Implicit in this argument is an assertion that the establishment of a radically different organizational form involves much more than simply demonstrating technical efficiency or competitive superiority. New organizational practices and structures challenge a broad array of institutional factors, including regulatory structures, power relations and taken for granted assumptions about appropriate behavior. Such changes also threaten to redefine competitive and co-operative interactions. Legitimating a new organizational form is, therefore, a major social undertaking involving changes in meaning systems and values. Similarly, creating a new organizational form involves the simultaneous reconfiguration of existing markets for that form (Brint and Karabel, 1991) or, perhaps, the social construction of entirely new markets (Van de Ven and Garud, 1989). Understanding this scope of change can only occur within the context of a theoretical construct that is attentive to both structural and ideological change and one which is conceived of as a unit of analysis which is embedded in larger social systems.

### Overview of the theoretical argument: Why are governance mechanisms the key to understanding the emergence of new organizational forms?

The argument developed in this thesis is that new organizational forms are not the result of random variation of populations of organizations, as suggested by organizational ecologists (Hannan and Freeman, 1989). Nor are they the happenstance product of exogenous 'shocks' to highly institutionalized fields (Greenwood and Hinings, 1996). Rather, new organizational forms are the result of conscious effort and massive 'institutional work' performed by sets of social actors intent on realizing self-interest (DiMaggio, 1988, 1991; Brint and Karabel, 1991). This study suggests that new organizational forms represent overt strategies of 'institutional entrepreneurs" (DiMaggio, 1988) who seek to realize self interest by taking advantage of shifts in the dominant mechanisms of social control in organizational fields. This study further proposes that the shifts in social control, termed 'governance mechanisms' are the result of competitive interactions between sub-communities which populate an organizational field.

Organizational fields develop sophisticated methods of social control, designed to govern the actions of field members. Scott (1995:104-105) describes these forces of social control as "governance structures" and observes that fields vary greatly in their mechanisms of governance "ranging from the more spontaneously equilibriating operation of markets to various types of self-enforcing mechanisms, such as alliances or network forms, to externally enforced hierarchies and regulative structures" such as state regulation. In this description, Scott implicitly describes a continuum of three general categories of social governance; market, normative and regulative.

This study proposes that the mutual and dynamic interaction of market, state and professional governance structures provide some generic method of social control which contributes to the process of stabilization or structuration (Giddens, 1979; Ranson, Hinings and Greenwood, 1980) within an organizational field. This is based on the assumption that all three forces co-exist and mutually determine compliance in organizational relations within a given field. There is no necessary assumption about the relative primacy of one or another of the governance mechanisms, but that, in stable organizational fields, they exist in a state of relative equilibrium. In situations of social change, however, the equilibrium is disrupted and one or another type of governance is likely to predominate. The dynamic interaction of these governance structures determines both the structural and ideational aspects of an organizational field and, therefore, influences the development path of new organizational forms which emerge from a changing organizational field.

The prevailing view of organizational fields suggests that, as fields mature, the institutional forces of conformity become stronger and organizations within the field begin to resemble each other (DiMaggio and Powell, 1983). That is, organizations within a highly structurated field become isomorphic (Scott, 1994). In the context of governance mechanisms, described above, mature fields have achieved a state of equilibrium or balance amongst the primary governance mechanisms. Typically, one form of governance predominates although the others continue to have influence over social actors within the field. Most empirical studies in institutional theory have focused on processes of isomorphism in highly mature fields. Considerably fewer studies assess processes of *non-isomorphic* change or the instability of governance mechanisms in organizational fields.

This thesis proposes that new organizational forms occur when a field experiences shifts in dominant modes of governance. Such shifts represent 'opportunity fields' and provide a disruption in both the institutional forces which constrain activity and "the fields of opportunity that remain open" (Brint and Karabel, 1991:348). Shifts in the dominant mode of governance mark the onset of de-institutionalization and the onset of non-isomorphic institutional change (Oliver, 1991). Changes in governance structures create the possibility for redefinition of the rules and assumptions that were associated with the previous governance system. Moreover, such shifts in governance serve to reconfigure social boundaries and reallocate resources within the field, creating, not only new market opportunities, but new markets (Van de Ven and Garud, 1989; Powell, 1991).

This thesis also proposes that such shifts in governance are not necessarily accidental, but represent the willful activity of institutional entrepreneurs, or "organized actors with sufficient resources" who see an "opportunity to realize interests they value highly" (DiMaggio, 1988:14). As such, new organizational forms are part of a larger process by which markets are socially re-constructed (Granovetter, 1985). In this view, field opportunities are not created by chance, but are "socially constructed domains" (Van de Ven and Garud, 1989) which represent opportunism, innovation and strategic action within an institutional context. New organizational forms represent a highly complex form of technological and social innovation, designed to further the interests of entrepreneurs by altering institutionalized assumptions about the appropriate modes of organization within the field.

Finally, this thesis challenges the prevalent assumption that organizational fields are homogenous constructs populated by relatively similar social actors who share, or strive to share, common organizational forms or practices. Rather, fields are thought to be *nested* constructs composed of different sub-populations which may co-exist in a stable state for relatively long periods of time. DiMaggio (1994) refers to these sub-populations as "communities" and argues that, even though communities within a field may share a great deal of commonality, they exert pressures on each other which arise from inherent differences. These communities engage in a process of co-evolution which, at the macro-field level, may appear relatively smooth and continuous. In fact, however, these communities are in a constant process of dynamic interaction and the boundaries between them are subject to ongoing interpretation and negotiation. Communities within a field may vary quite dramatically in terms of their historical development, their internal 'institutional logics' and their relative levels of structuration. New organizational forms, in this context, occur "through the effacement of boundaries between communities" (DiMaggio, 1994:445).

The notion that organizational fields are not homogenous in terms of relative levels of structuration has important implications for understanding processes of change that result in new organizational forms. First, it suggests that expression of appropriate types and paces of change may differ between communities within a field. The uneven dispersion of governance structures throughout a field may act as a potential source or dynamic of instability and conflict within a field. Second, it suggests that political and competitive struggles between organizational communities may provide the impetus for change within a field and may also influence the direction of change. Third, it suggests that institutional entrepreneurs may be those social actors with the greatest facility for influencing or re-shaping modes of governance to suit their interests. New organizational forms may well provide the political vehicle for forming alliances and coalitions that span communities of interest within a field and sufficiently reconcile differences so that stability may return to the field.

## Site Elaboration

I have argued that new organizational forms are the result of processes of institutional change and that institutional change is best understood at the organizational field level of analysis. I have further suggested that the key to understanding the emergence of new organizational forms lies in understanding the dynamics of governance mechanisms, or the forces of social control, operant in organizational fields. I have posited three generic governance mechanisms and provided a preliminary sketch of their interaction. I have also suggested that organizational fields are not homogenous constructs but consist of diverse communities of organizations, subject to different levels of structuration and stratification. Finally, I have suggested that new organizational forms represent a strategic attempt by powerful social actors, termed institutional entrepreneurs, to realize self-interest by redefining the dominant mode of governance of an organizational field. Details of this conceptual framework and theoretical argument will be developed in Chapter Two.

The ideas developed above will be elaborated and examined by studying the emergence of a new organizational form-the multi-disciplinary partnership (MDP) in the field of professional business services. Specifically, I present a case study of the emergence of MDPs in the legal community. The site will be discussed more full in Chapter 3 ("Methods"). Here I outline the new organizational form in its setting.

In 1997 a Canadian Big Five accounting firm announced that it had 'bought' a blue-chip corporate-commercial law firm in Canada (Middlemiss, 1997). The announcement marked an aggressive move by accountants into the field of legal services and caused considerable consternation from the legal profession, regulators in the financial markets and within the accounting profession itself (Middlemiss, 1997). The creation of a 'captive' law firm (legal professional legislation and professional rules did not yet permit MDPs) marked the establishment of the first tangible evidence of MDPs in the legal profession in North America. MDPs, thus, represent a substantial disruption in a highly institutionalized field. The implications of such a radically new organizational form are not clearly understood and have generated considerable confusion, suspicion and concern in the legal profession. The impact of this change carries implications for professional regulation, re-defines competitive relationships within and between professions and challenges many of the taken-for-granted assumptions about the appropriateness of organizational form and practice in the legal profession. The emergence of MDPs in the legal profession, therefore, offers an ideal opportunity to analyze the creation of a new organizational form and the process of institutional change that, necessarily, surrounds such a phenomenon.

## Summary and Research Question Revisited

Given this preliminary conceptual framework and the proposed site for analyzing the process, the primary research question, "*How do new organizational forms emerge*?," can be re-specified into three important subsidiary questions; *"Who are the institutional entrepreneurs?", "How are jurisdictional boundaries between communities of a changing organizational field negotiated?" and "How are new organizational forms legitimated?".* Each of these subsidiary questions is elaborated below.

*Who are the institutional entrepreneurs:* The preliminary conceptual framework sketched out above suggests that new organizational forms are the deliberate product of powerful social actors within the field. It also provides some insights about where one might look to find institutional entrepreneurs and how they act to produce new organizational forms. It suggests, for example, that institutional entrepreneurs may be those actors best able to influence or anticipate shifts in governance mechanisms. It also suggests that institutional entrepreneurs will be those social actors who are most able to introduce some form of equilibrium into a field made chaotic by the contradictory influences of different market, regulatory and normative governance mechanisms. Thus, successful entrepreneurs will be those social actors who are best able to provide a model of organizational form or practice which best reconciles the conflicting institutional logics that are necessarily present in each of the modes of governance. In this view the institutional entrepreneur serves an integrative function, engaged in a long-term effort to create a unified and stable system of field level governance based on balancing conflicting interests for mutual advantage.

*How are the jurisdictional boundaries between sub-communities within a changing field negotiated.* This research question devolves from DiMaggio's (1994) observation that fields consist of diverse communities of actors who engage in boundary struggles. This is also the observation of Abbott (1988), who noted that professional communities are in constant conflict over jurisdiction and that the precise boundaries between professions are subject to ongoing negotiation and definition. Very little empirical work has followed these observations and, to date, we have only a very weak understanding of the mechanics by which these boundaries are negotiated. The creation of MDPs serves as a form of validation of Abbott's primary thesis in that it has, already, created the framework for aggressive competition between accountants, consultants and lawyers. It also extends Abbott's thesis, which really only contemplated open competition between professions in a context where the underlying uniqueness and separation of each profession would, largely, remain intact. The changes suggested by MDPs, however, are much more sweeping than those contemplated by Abbott in that they suggest the wholesale integration of several professions which may, ultimately, threaten the underlying distinctions and uniqueness between professional communities.

*How are new organizational forms legitimated?* Legitimacy forms a central component of understanding the creation of new organizational forms. Resource dependency theorists (Dowling and Pfeffer, 1975; Pfeffer and Salancik, 1978) view legitimacy as a resource that new organizational forms must obtain in order to perform effectively. Institutional theorists (Scott, 1995; Suchman, 1995) identify legitimacy as a process of normative and cognitive evaluation by key gatekeepers in the organizational community that grant status to new organizational actors. Population ecologists (Hannan, 1986) argue that legitimacy is the key to the long-term survival of a population of newly founded organizations. Despite their consensus about the importance of the construct, legitimacy remains an understudied phenomenon by organization theorists. The emergence of MDPs in the legal profession provides a key opportunity to observe processes of legitimation of a new organizational form in a highly institutionalized context.

The theoretical questions and preliminary theoretical framework, sketched out above, will be developed in further detail in the next chapter. Chapter Two reviews the existing literature in institutional theory which deals with institutional change, with specific attention paid to those studies that show new organizational forms as the outcome of change. Chapter Three outlines the methodology of this dissertation, which consists of a case study of the emergence of MDPs in the legal profession in North America. The case study is presented in Chapters Four and Five. Chapter Four presents an historical account of the emergence of MDPs to address the first two subsidiary research questions regarding institutional entrepreneurship and the negotiation of professional boundaries. Chapter Five focuses explicitly on the strategies used by various actors engaged in the MDP debate to legitimate the new organizational form. The dissertation conclusions, theoretical implications and directions for future research are presented in Chapter 6.

# CHAPTER TWO

# NON-ISOMORPHIC INSTITUTIONAL CHANGE AND THE EMERGENCE OF NEW ORGANIZATIONAL FORMS

## Introduction

The previous chapter posed an empirical question: where do new organizational forms come from? Institutional theory was proposed as the appropriate theoretical lens to address this question because of its sensitivity to the social and cultural processes assumed to accompany the legitimation of a new organizational form and because the organizational field was thought to be the unit of analysis best suited to account for the structural and ideational properties of new form creation. The previous chapter also sketched out a potential explanatory framework for the emergence of new organizational forms, drawn from institutional theory. The argument proposes that new organizational forms result from shifts in governance mechanisms in highly mature organizational fields. These shifts serve to redefine the structure of competitive interactions and the distribution of resources within a field. Often they redefine the boundaries of the field itself. Such shifts in governance are not accidental. They are the actions of institutional entrepreneurs who use the shifts in field governance to further self-interest.

At the core of this argument is the suggestion that there are two basic and different forms of institutional change; isomorphic and non-isomorphic change. Isomorphic change leads to a convergence of organizational form. The outcome of non-isomorphic institutional change is organizational heterogeneity. New organizational forms are the product of non-isomorphic institutional change. Most research in institutional theory has focused, however, on processes of isomorphic change. In contrast, institutional change leading to diversity of organizational forms has been, largely, ignored. This chapter seeks to understand non-isomorphic institutional change within an organizational field that results in a new organizational form. Implicit in this analysis is an assumption that stability and change are reciprocal and related processes and that the same social forces which cause conformity and governance in an organizational field, can also, through their absence or alteration, cause heterogeneity or deviance in organizational form. When institutional pressures for convergence break down, as when one replaces another dominant form of field governance, opportunities are created within a field for institutional entrepreneurs to introduce new forms and practices.

This chapter begins by defining the primary unit of analysis; the organizational field. It then reviews the current literature on institutional change with a view to separating empirical studies that have focused on isomorphic change from those that have focused on non-isomorphic change. It will be shown that those few studies which observe new organizational forms as the primary outcome of institutional change share three significant characteristics. *First*, the studies commonly describe organizational fields as progressing through distinct stages of structuration, as fields mature. *Second*, the studies share the observation that organizational fields are not homogenous constructs but, rather, are complex, nested entities with sub-communities of inherently different interests, histories and developmental paths. *Finally*, the studies share the observation that fields are subject to sophisticated mechanisms of social control or governance mechanisms. Based on these observations, a conceptual framework of non-isomorphic institutional change is developed which describes the process by which new organizational forms are created. The chapter concludes by relating the implications of this framework for non-isomorphic institutional change to the research context of MDPs.

## Organizational Fields

There are two primary definitions of an organizational field. The first, from DiMaggio and Powell (1983:143), emphasizes the structural/functional aspects of interorganizational relations and defines the term 'organizational field' to mean:

> "those organizations that, in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers,

> regulatory agencies and other organizations that produce similar services or products."

By introducing a broader range of organizational actors, such as suppliers, consumers and regulators, into the construct, DiMaggio and Powell distinguish the organizational field from more traditional notions, like industry sector, by emphasizing the potential contribution of actors that are not necessarily competitive or involved in product output. DiMaggio and Powell's concept of field, while still grounded firmly in structural/functional terms, expands the boundaries of previous distinctions by incorporating a wider array of organizational actors who interact in a meaningful and consistent way.

A second major element of the organizational field construct is derived from Bourdieu's (1977) description of the recursive influence of shared meanings between actors who share "social fields". In organization theory, this approach is best typified by Scott's (1994) emphasis on the *ideational* aspects of organizational fields. Scott argues that organizational fields are, largely, a social construction and, as such, are a product of patterns of mutual awareness, shared meaning systems and processes of structuration which are the natural result of organizational interaction:

> "the notion of a field connotes the existence of a community of organizations that partakes of a common meaning system and whose participants interact more frequently and fatefully with one another than with actors outside the field (Scott, 1994:207-8)."

The ideational approach is, arguably, the favored interpretation of organizational fields by contemporary researchers. An underlying assumption of this stream of work is that an organizational field is essentially a cognitive structure, the boundaries of which are a product of mutual understanding and awareness between those actors who comprise the field (Fligstein, 1990). Drawing from previous work on interpretive schemes (Ranson, Hinings and Greenwood, 1980; Bartunek, 1984) and cognitive communities (Porac and Thomas, 1988; Porac and Baden-Fuller, 1989), Scott (1994) argues that mutual belief systems define the boundaries of organizational fields in much the same way that geographical boundaries circumscribe traditional industry sectors.

Given these structural/functional and ideational attributes, the organizational field is a construct quite different from more traditional constructs, such as 'industry' or 'sector', in both its broader, more inclusive scope and in its sensitivity to social, political and cultural influences. The structural boundaries of organizational fields are broader, incorporating social actors who usually stand outside an industry, and, therefore account for both competitive and non-competitive interactions between actors. The importance of non-competitive interactions and non-purposive organizational activity has been previously acknowledged (Selznick, 1949:260; DiMaggio and Powell, 1991:13). The organizational field construct also emphasizes the role of meaning systems and allows its boundaries to be circumscribed by shared cognitions and values. Most important, perhaps, is the specification of organizational fields as arenas of symbolic interaction between social actors. Increasingly, organizational fields are viewed as forming around ideologies rather than product markets or technologies (Hoffman, 1999). Organizational fields have been described as "arenas of power relations" (Brint and Karabel, 1991) and of politics (Jennings and Zandberen, 1995). Introducing notions of power and politics into an understanding of organizational fields makes the construct more amenable to addressing issues of legitimation and influence, characteristics which we have identified as important in understanding the creation and establishment of new organizational forms.

In spite of its potential to provide an understanding of the dynamic process by which new organizational forms emerge from changing organizational fields, surprisingly few studies of institutional change in organizational fields illustrate evidence of non-isomorphic change. In the next section we attempt to understand why that might be the case.

## Institutional Theory and Isomorphic Change

In spite of our assertion that institutional theory is the appropriate theoretical basis for understanding the process by which new organizational forms emerge, most research in institutional theory has focused on instances of isomorphic rather than non-isomorphic change. Appendix 2A lists empirical studies of institutional change taken from six major journals in sociology and organization theory from 1983 to 1999 and from DiMaggio and Powell's 1991 text *The New Institutionalism in Organizational Analysis*.[1] Of the thirty-five studies listed, only eight indicate a new organizational form or show organizational heterogeneity as an outcome of processes of institutional change. The remaining twenty-seven studies observe convergence in organizational form and practice as the ultimate result of institutional change. Given our interest in understanding how institutional processes contribute to the creation of new organizational forms, it is important that we distinguish studies of isomorphic and non-isomorphic change. Moreover, it is also important that we scrutinize the latter studies to determine how they can assist our understanding of the role of processes of institutionalization in generating new forms of organization.

A comparison of the methodological differences and theoretical assumptions of these two groups of studies suggests that those studies which demonstrate isomorphic change are too narrowly focused, or are insufficiently holistic, to adequately capture the dynamics by which new organizational forms are created. The lack of holism is expressed in two fundamental ways. First, studies of *isomorphic* institutional change cover relatively short time frames. The focus on short time frames means that these studies fail to account for adoption that occurs as a result of market pressures, i.e., for reasons of technical efficiency, rather than as a result of mimetic, coercive or normative pressures. More importantly, the short time frame of such studies fails to acknowledge that institutionalization is a *process* that includes stages of pre-institutionalization, institutionalization and de-institutionalization (Tolbert and Zucker, 1983). Most studies of isomorphic change fail to specify which stage of institutionalization is the subject of analysis. As well, most studies of isomorphic change focus on a single stage of institutionalization.

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[1] The journals are *American Sociological Review, Administrative Science Quarterly, Academy of Management Journal, Organization Studies, Social Forces,* and *Journal of Management Studies.* Journal selection was based on an effort to be as inclusive as possible and include as many empirical studies of institutional change in American and European schools of management and sociology.

The second expression of a lack of holism in research on institutional change is the tendency to treat mechanisms of institutionalization in isolation. That is, research which shows convergence of organizational form also tends to view institutional pressures, such as mimicry, coercion and normative behavior, as sequential and independent processes that operate in isolation from each other and in isolation from competitive pressures from the technical environment. This is contrary to DiMaggio and Powell's (1983) original conceptualization of these forces as acting in dynamic synthesis. Each of these observations will be elaborated in turn.

*Short time frames and inattention to stages of institutionalization:* In their original formulation of the concept of isomorphic change, DiMaggio and Powell (1983) identify two types of isomorphism, competitive and institutional. Competitive isomorphism pushes organizations to adopt common organizational practices and forms because of marketplace pressures arising from a common task environment. Institutional isomorphism, the primary focus of DiMaggio and Powell's attention, causes organizations to adopt similar practices and forms because of pressures from a common institutional environment. These pressures are, primarily, social and political and are expressed in three forms; coercive, normative and mimetic.

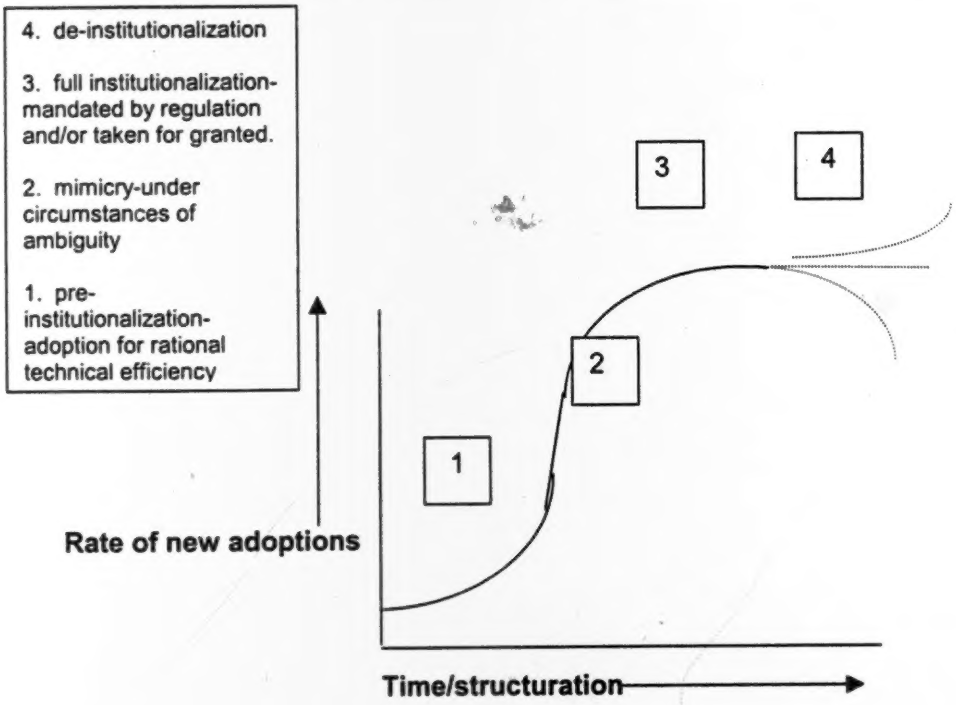
Although DiMaggio and Powell focus almost exclusively on institutional pressures, they present an historical foundation to their overall schema of organizational change. In the early stages of development of an organizational field, they argue that, "early adopters of organizational innovations are commonly driven by a desire to improve performance (DiMaggio and Powell, 1991:65)." At such an early stage of field development, market forces prevail and the variety of organizational forms and practices are quite diverse. However, "once disparate organizations in the same line of business are structured into an actual field (as we argue, by competition, the state or professions) powerful forces emerge that lead them to become more similar to one another" (DiMaggio and Powell, 1991:65). As the field becomes more institutionally defined or structurated, the institutional environment becomes more important than the technical or market environment as a causal agent for change and organizations become to resemble each other as a result of social pressures expressed as mimicry, coercion and normative behavior.

DiMaggio and Powell (1983) point to Tolbert and Zucker's (1983) work on municipal government reform as an empirical illustration of the historical shift from market to institutionally based determinants of organizational form and practice as a field matures. Tolbert and Zucker (1983) examine the diffusion of municipal civil service reform in the US from 1885 to 1935. They identify two types of adoption: one where state government legislated the adoption of the new form and another where states did not mandate adoption. In the latter case adoption rested on normative influence and took the form of a social movement. Early adoption of the reforms was related to specific government needs and could be predicted by technical factors such as city size, demographic complexity and socioeconomic composition. Later adoption, however, could not be predicted by factors in the task environment but, rather, were predicted by institutional variables relating to the perceived legitimacy of the new structural form. They conclude with the observation that market and institutional pressures operate sequentially, as a field matures, and that early adopters do so in order to achieve technical efficiency whereas late adopters do so under institutional pressures to conform:

> "The rush to create organizations cannot be explained either by the need to counterbalance the power of existing organizations or by any distinct advantage inherent in organizational form (such as increased production efficiency). Rather, the rapid rise and continued spread of organizational form is best interpreted as an instance of institutionalization: early in the process of diffusion, the organizational form is adopted because it has unequivocal effects on productivity, while later it becomes seen as legitimate to organize formally, regardless of any net benefit (Tolbert and Zucker, 1983:13)."

Tolbert and Zucker (1983) suggest an historical process of maturation or structuration of an organizational field defined by three sequential stages (see Figure 2.1). In the first stage, a pre-institutionalization phase, adoption occurs because of pressures in what Scott and Meyer (1983) term the "task environment". That is, adoption occurs for reasons of technical efficiency. In the second phase adoption occurs under conditions of ambiguity and are described, by DiMaggio and Powell (1983), as incidents of "mimetic isomorphism". In the latter phase, when organizational forms are fully institutionalized, extant organizational forms are either mandated by formal regulation or become taken for granted.

**Figure 2.1**
***Tolbert and Zucker's Stages of Institutionalization***


4. de-institutionalization
3. full institutionalization-mandated by regulation and/or taken for granted.
2. mimicry-under circumstances of ambiguity
1. pre-institutionalization-adoption for rational technical efficiency
3
4
2
1
Rate of new adoptions
Time/structuration

Most studies of isomorphic change, however, fail to identify which stage of the process of institutionalization is under examination. A review of the studies listed in Schedule 2A, suggests that institutional research has focused, almost exclusively, on studying instances of mimetic adoption under conditions of uncertainty (Stage 2). Of the thirty-five studies listed in Table 2.1, seventeen or nearly fifty per-cent, examine instances of only Stage 2 types of institutional change (See Figure 2.2). That is, nearly half of the studies focus only on mimetic adoption under conditions of uncertainty. Considered from another perspective, of the thirty-five studies identified in Schedule 2A, twenty-one, or sixty per cent, examine only a single stage of the process of institutionalization (See Figure 2.3). More important, for our purposes, only eight studies consider the full process of institutionalization (i.e., all three stages) and, as a result, include an implicit fourth stage of *deinstitutionalization*, with the concomitant observation of the emergence of new organizational forms.

**Figure 2: Studies of Institutional Change (Isomorphic and Non-Isomorphic) Categorized by Tolbert and Zucker's (1983) Stages of Institutionalization**

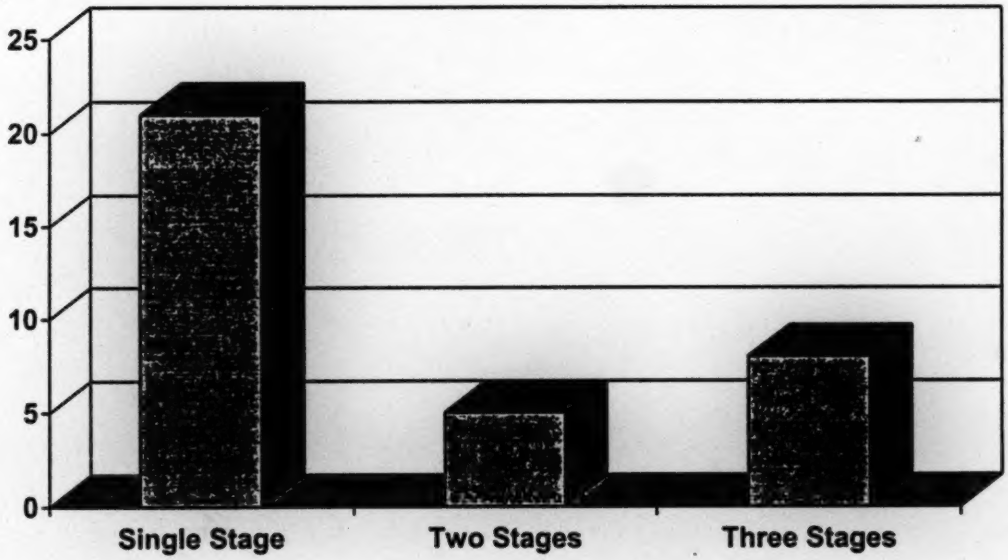
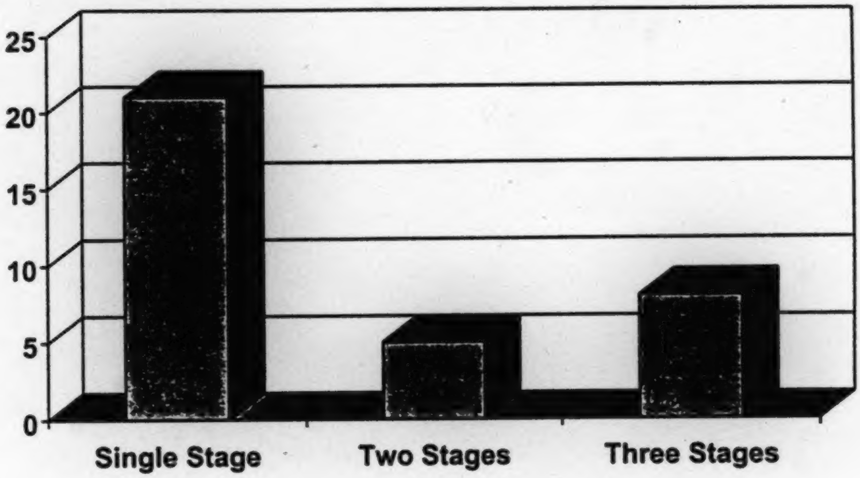


**Figure 2.3: Studies of Institutional Change (Isomorphic and Non-Isomorphic) Categorized by Numbers of Stages of Institutionalization Considered**



An important component of these researchers' inability to observe the full process of institutionalization and de-institutionalization is the short time frames of these studies. Because different fields adhere to different metabolic rates of structuration, it is difficult, if not impossible, to specify the appropriate time span for studying change in an organizational field. However, the time span covered in the analysis should be sufficient to include both the emergence of an organizational field, where market mechanisms of change will be evident, and mature stages of field structuration, where both market *and institutional* mechanisms of change may be observed. A review of the time scales covered in the studies listed in Schedule 2A demonstrates that most studies of *isomorphic* institutional change examine relatively short historical periods; a median time span of five years.[2] In contrast, those studies which show organizational heterogeneity or non-isomorphic change, as an outcome of process of institutional change have a median time span of 60 years and a mean time span of 57 years. This suggests that, even if most institutional researchers *were* sensitive to the possibility of market based pressures for change, the lack of longitudinal analysis precludes any possibility of observing such an influence and diminishes the likelihood of observing non-isomorphic institutional change.

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[2] The median time span is 5 years. This may be an overestimate as cross-sectional studies (surveys) were coded as 1 year. The mean time span is 9.5 years. Two large outliers (Lehrman-50 years, and Dobbin et al-

*Focus on a single mechanism of isomorphism acting in isolation:* The second expression of a lack of holism in research on institutional change is the tendency to treat mechanisms of institutionalization in isolation. That is, most researchers assume that isomorphic pressures operate sequentially and in isolation from each other. This is contrary to DiMaggio and Powell's original thesis, which suggests a process of sedimentary, rather than sequential application of technical and institutional pressures to conform (Cooper et al, 1996). Even though institutional pressures arise over time as a field matures, market influences do not disappear. It makes sense that *both* market and institutional pressures operate on organizations within the field simultaneously. The argument, similarly, applies to the three mechanisms of isomorphic change. Mimetic, normative and coercive processes, according to DiMaggio and Powell (1983), may be indistinguishable in practice. DiMaggio and Powell (1983) state that their typology is analytic and "the types are not always empirically distinct" and, likely, all three may be active, in parallel, as organizations succumb to institutional pressures to conform.

An important, but undeveloped corollary to DiMaggio and Powell's (1983) theoretical statement is that, at least at the early stages of field maturity, there is no necessary assumption that the three mechanisms of isomorphic change are acting in unison. DiMaggio and Powell assert that, as an organizational field matures and becomes more highly structurated the forces are likely to converge on a given organizational form or practice and, as a result, may become indistinguishable from each other. In early stages of field structuration, however, (and, perhaps more importantly, for purposes of the argument presented here, in

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30 years) account for the bulk of this average and, given a large standard deviation (11.5 years) and a small data set, the median is a more accurate measure.

situations of *destructuration*), it is more likely that regulatory, normative and mimetic behaviors will not converge on a common form and that organizations within the field will be subject to conflicting pressures from state agencies, market demands and normative beliefs. It is these conflicting pressures which create the opportunity for organizational heterogeneity in an organizational field.

If, at certain stages of field maturity, mimetic, coercive and regulatory forces operate in conflict rather than in unison, those studies which seek to observe non-isomorphic, rather than isomorphic institutional change ought to identify more than a single mechanism of institutional pressure. Figure 2.4 summarizes the studies of institutional change by mechanism (i.e., mimetic, coercive or normative). Mimetic isomorphism is the most popular subject of study, appearing, either solely or in conjunction with other mechanisms, in sixty-three per cent of the papers. Fourteen studies, or about forty per-cent, consider only mimetic mechanisms of isomorphism. Figure 2.5 summarizes the studies of institutional change by the number of isomorphic mechanisms considered. Most studies (70%) focus on a single mechanism of institutional change. More importantly, those studies which describe processes of *non*-isomorphic change all include more than one mechanism of institutional pressure and three of the eight studies include all three mechanisms.

Figure 2.4: Studies of Institutional Change Categorized by Types of Mechanisms of Isomorphism (Coercive =C, Normative=N & Mimetic=M)

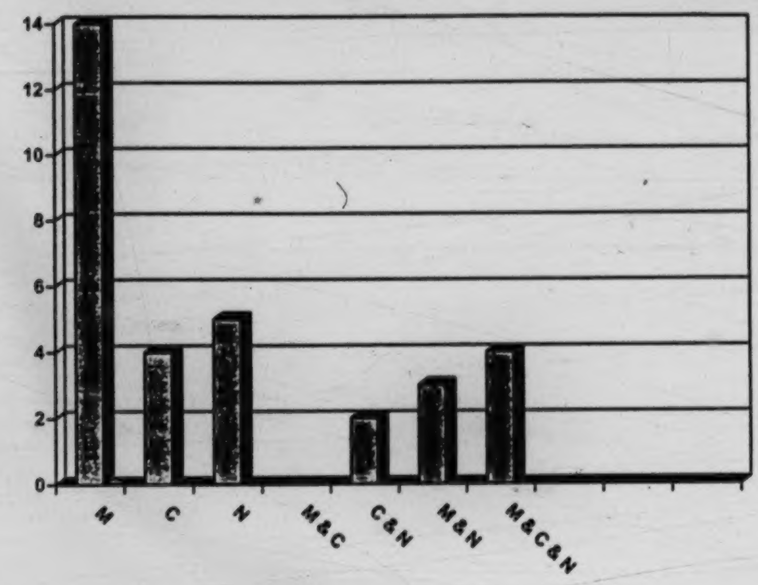
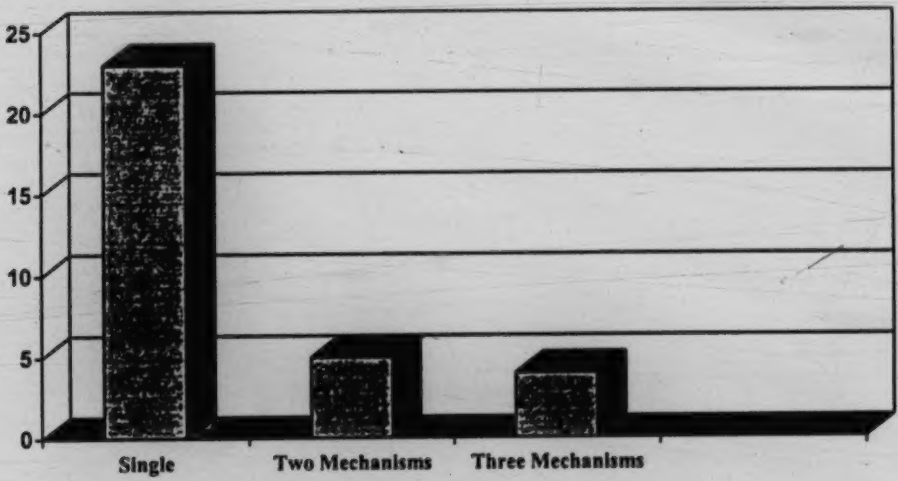


Figure 2.5: Studies of Institutional Change Categorized by Numbers of Mechanisms of Isomorphism



In sum, those studies which show isomorphic institutional change are insufficiently holistic. They fail to capture the richness and complexity of DiMaggio and Powell's (1983) original conceptualization of institutional change. Their lack of holism, in theory and methodology, forces a focus exclusively on isomorphic change and, in particular, encourages a particularistic and sequential approach to understanding institutional change. The narrow time spans of these studies, combined with their focus on a single stage of the process of institutionalization of an organizational field, makes it highly unlikely that such research will observe illustrations of new organizational form development and organizational heterogeneity from field level institutional change.[3]

By contrast, we have much to learn about how new organizational forms are created by institutional processes from a careful examination of those few studies on institutional change which *do* demonstrate heterogeneity of form as an outcome. In the next section we review these studies and attempt to draw a framework of the institutional dynamics of new organizational forms.

## Heterogenic Institutional Change and Field Level Governance

Only a handful (eight) of empirical studies show organizational heterogeneity as an outcome of processes of institutional change. These include Thornton's (1994) description of the re-creation of the college publishing industry through corporate acquisition; DiMaggio's (1991) study of US art museums; Fligstein's (1985/1987) accounts of the establishment of the multi-divisional (M-Form) corporate structure; a description of the emergence of the radio broadcasting industry by Leblibici, Salancik, Copay and King (1991); Holm's (1995) analysis of Norwegian fishing; Lomi's (1995) account of the reconstitution of Italian banks and Hoffman's (1999) analysis of the emergence of the environmental organizational field.

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[3] It is hardly surprising that empirical research in institutional theory has focused on illustrations of isomorphic change. The seminal research question, as posed by DiMaggio and Powell (1983), queries the surprising homogeneity of organizational forms. The intent here, therefore, is not to criticize the inattention to illustrations of non-isomorphic change but rather to demonstrate how attending to this research question has led to a particularistic and sequential focus on mechanisms of institutional change and to underscore the need to adopt a more holistic approach when attending to questions of non-isomorphic institutional change.

These studies suggest three significant characteristics. *First*, they all adhere, either explicitly or implicitly, to the notion that organizational fields have 'life cycles' of maturation and proceed through distinct stages of increasing structuration. *Second*, the studies demonstrate that organizational fields are not homogenous constructs but, rather, are complex, 'nested' entities with sub-communities of social actors with inherently different interests. *Finally*, the studies share the observation that organizational fields are subject to sophisticated methods of social control or 'governance mechanisms' and that understanding these governance mechanisms is an essential ingredient to understanding non-isomorphic change.

These three characteristics hold important clues to understanding how processes of institutionalization are linked to the creation of new organizational forms. The notion that organizational fields move through distinct stages of structuration provides some clues as to *when* new organizational forms are most likely to occur and *where* within an organizational field such innovation ought to be expected. The suggestion that organizational fields are complex, nested entities suggests several characteristics about *who*, amongst the social actors that populate a field, is most likely to assume the role of an institutional entrepreneur. And the observation that fields are subject to changes in dominant governance mechanisms generates some insights as to *how* these entrepreneurs will successfully legitimate a new organizational form. This section elaborates each of these three common characteristics of non-isomorphic institutional change into a conceptual framework of new organizational form creation. The section uses this framework to develop several propositions about the institutional processes involved in creating new organizational forms with particular emphasis on such processes in highly mature organizational fields.

## Life Cycles

There is an increasing awareness amongst institutional researchers that organizational fields are not stable constructs (Greenwood and Hinings, 1996; Hoffman, 1999). Rather, fields are dynamic units with life cycles of growth and decline (Scott, 1994). Both DiMaggio and Powell (1983) and Scott (1994) acknowledge that fields develop over time, implying that they evolve from young to mature states. The process of development of an organizational field is characterized as a process of structuration or "mutual enactment" (Giddens, 1984) of relations between social actors, through which actors develop a heightened awareness of each other (Ranson, Hinings and Greenwood, 1980). As fields mature they become increasingly structurated or more "institutionally defined" (DiMaggio and Powell, 1991:65).

DiMaggio and Powell (1983) propose indicators by which one can assess the level of institutional definition or structuration of an organizational field. These are (1) Increasing interactions between organizations in the field; (2) the emergence of sharply defined structures of domination or patterns of coalition; (3) An increase in the information load with which organizations must contend; (4) A heightened mutual awareness among participants within the field that they are involved in a common enterprise. Scott (1994) has added three other indicators: (5) Increasing agreement on the institutional logics guiding activities within the field; (6) Increasing isomorphism of structural forms within populations of the field; and (7) Increasing clarity of field boundaries.

Structuration processes, according to DiMaggio (1991:267), "are historically and logically prior to the process of institutional isomorphism to which most institutional research has attended." This statement is consistent with the notion that organizational fields have a life cycle whereby fields emerge, mature and decline over time. It also suggests that empirical studies which emphasize isomorphic, rather than non-isomorphic change, are most likely to study mature fields characterized by high degrees of structuration. Organizations are more likely to exhibit convergence toward a common form (Scott, 1994). In contrast, in early stages of field development, when structuration levels are low, "organizational fields display considerable diversity in approach and form. Once a field becomes well established, there is an inexorable push toward homogenization" (DiMaggio and Powell, 1983:64).

The notion that organizational fields change according to definable developmental stages is consistent with one of the general themes in research on social change. Eisenstadt (1968), observes similar attempts in the general evolutionary theories of social change developed by Compte and Spencer in sociology and Tylor and Westmark in anthropology. The major assumption is that social constructs move from simpler, less complicated and less differentiated structural forms to more complex, differentiated and more stable forms. In its most simplistic version, social structures are born, reach mid-life, mature and then die (or are replaced by another structure that proceeds through similar developmental stages). Accompanying the idea of a life cycle of social organization is the notion that change, such as the introduction of a new organizational form, is most likely to occur at the very early and very late stages of development.

The most emphatic statement of the stages of structuration of the life cycle of an organizational field is drawn from Tolbert and Zucker (1983) and has been discussed previously (section 2 above) and was represented graphically in Figure 2.1. Three distinct stages of structuration were identified from Tolbert and Zucker's (1983) analysis: 1) A *pre-institutionalization* stage where market forces predominate and adoption of an organizational form occurs, primarily, for reasons of technical efficiency; 2) An *intermediate* phase where normative pressures predominate and adoption is primarily mimetic and occurs under conditions of ambiguity; 3) A *mature* phase where the innovative organizational form becomes fully institutionalized and adoption is mandated by regulation and/or becomes an unquestioned assumption amongst actors within the field.[4]

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[4] A fourth stage has been postulated which involves some form of de-institutionalization or recomposition of the organizational field. This phase was not identified by Tolbert and Zucker and forms the focal point of this study. It is discussed in greater detail in the final section of this Chapter.

Studies of non-isomorphic change in organizational fields each describe developmental stages of organizational fields that are distinguished by relative levels of structuration. Thornton (1994:200) explicitly refers to the process as a 'life cycle' as do DiMaggio and Powell (1983:64). Leblibici et al (1991) do not use the term 'life cycle' to describe the process of increasing structuration within the radio broadcasting field, but employ a similar term, the "cycle of change in institutional practices". And they describe a micro to macro ordering of increasing structuration, as practical solutions and inter-organizational relations become increasingly formalized into conventions and, ultimately, rules of conduct. Fligstein (1990), similarly, does not explicitly use the term 'life cycle' but, instead, refers to "stages" in differentiating the movement of organizations within the field from periods of low to high structuration. Leblibici et al (1991) use the term 'phases' and Hoffman uses 'stages'. Organizational fields, thus, develop through distinct stages of maturity characterized by increasing levels of structuration.

This time-ordering of the life cycle of organizational fields, illustrated graphically in Figure 2.6, has important implications for understanding the process of emergence of new organizational forms. Most important, for our purposes, is that a sensitivity to the relative level of structuration of a field provides important clues about *where*, within a field, new organizational forms are most likely to occur. Similarly, the life-cycle concept helps to predict *which* social actors are most likely to successfully assume the role of institutional entrepreneur by introducing an innovative organizational form. Each stage will be considered in turn.

*Stage 1:* Fields in early stages of development will have low levels of structuration, will be less subject to isomorphic pressures and will exhibit higher degrees of heterogeneity of organizational form. Because social pressures to conform are low (or perhaps non-existant) the primary motivation to adopt a new organizational form will be based on reasons of technical efficiency (Tolbert and Zucker, 1983). The likelihood of a large number of different or new organizational forms is, therefore, quite high and, one might expect that the degree of difficulty in establishing a new form is relatively low. The type of field level change involved in introducing a new organizational form in Stage 1 is expected to be "evolutionary" rather than "revolutionary" (Greenwood and Hinings, 1996). In a sense, organizational fields at the pre-institutionalization stage exhibit attributes of an open market, with low institutional barriers to the creation of new forms and relatively open competition for legitimacy on a narrow range of technical criteria of competitive efficiency.

The locus of institutional change, at this early stage of field structuration, is most likely to occur on the periphery of the organizational field (inasmuch as the 'center' and 'periphery' of the field have been sufficiently defined). This is based on the assumption that, at this early stage of structuration, the organizational field is just beginning to achieve definition and that actors on the periphery of the field are least subject to the conforming pressures of isomorphism (DiMaggio and Powell, 1983; Powell, 1991). This view is based on a highly structural view of organizational fields and assumes that organizational independence and structuration, at early stages of field formation, is relatively centralized and dissipates in accordance with the subject actor's distance from the center.

**Figure 2.6: Stages of Field Structuration**

<table>
<tr><th></th><th>***Stage 1***<br>***Pre-Institutionalization***</th><th colspan="2">***Stage 2***<br>***Mid-Life***</th><th>***Stage 3***<br>***Maturity***</th></tr>
<tr><td>Level of Structuration</td><td>***Low***</td><td colspan="2">***Moderate***</td><td>***High***</td></tr>
<tr><td>Primary Reason for Adoption</td><td>***Technical Efficiency***</td><td colspan="2">Mimicry under conditions of ambiguity</td><td>**Mandated by regulation and/or taken for granted**</td></tr>
<tr><td>Degree of Field Level Heterogeneity</td><td>***High***</td><td colspan="2">***Moderate***</td><td>***Low***</td></tr>
<tr><td>Liklihood of New Organization Forms</td><td>***High***</td><td colspan="2">***Moderate***</td><td>***Low***</td></tr>
<tr><td>Difficulty of Establishing New Forms</td><td>***Low***</td><td colspan="2">***Moderate***</td><td>***High***</td></tr>
<tr><td>Type of Institutional Change</td><td colspan="2">***Evolutionary***</td><td colspan="2">***Revolutionary***</td></tr>
<tr><td>Locus of Change Within The Field</td><td colspan="2">***Periphery***</td><td colspan="2">***Center***</td></tr>
<tr><td>Most Probable Institutional Entrepreneur</td><td>***Marginal Actors***</td><td colspan="2">***Outside Actors***</td><td>***Powerful Actors***</td></tr>
</table>

The notion that the periphery spawns institutional innovation in newly forming fields is supported empirically in Leblibici, Salancik, Copay and King's (1991) study of the initial development of the field of radio broadcasting in the US. The study reveals that innovations in the industry first arose amongst marginal actors operating on the fringe of the marketplace. Additional support for this view comes from a study of the diffusion of forms of participative management. Innovative managerial techniques in North America first appeared in peripheral actors such as smaller, non-unionized firms, family owned enterprises, financially destitute companies and relatively new, high technology firms (Kochan, Katz and McKersie, 1986). Over time, because of competitive pressures exerted by these marginal actors, the innovations diffused to dominant actors whose ultimate adoption served to legitimate them as new institutional practices.

Similarly, because structuration levels are low in newly emerging fields, the institutional barriers to the establishment and legitimation of a new organizational form will be quite limited. One would expect, for example, few regulations or laws about the legitimate mode of organization. Similarly, one would expect relatively little normative pressure toward a given mode of organizations simply because there is little congruence or agreement on a single form. This suggests that the 'institutional work' required to legitimate a new organizational form will be relatively low. Similarly, the impact of a new organizational form on the field, overall, will be slight. That is, the new organizational form will be part of an evolutionary, rather than revolutionary, mode of change (Greenwood and Hinings, 1996).

*Stage 2:* At mid-life, organizational fields are just beginning to exhibit the influence of institutional pressures. Structuration levels are moderate and actors experience a range of social pressures to conform. Adoption of a new organizational form is most likely to occur as a result of mimetic behavior under conditions of ambiguity, rather than for reasons of technical efficiency or as a result of coercive pressures (Tolbert and Zucker, 1983). Although structuration levels are moderate, they have sharpened field boundaries sufficiently that actors within the field are now aware of their engagement in a "common enterprise" (Scott, 1995).

Even though the boundaries of fields, at mid-life, are well established with distinct categories of actors who are "inside" and "outside" the field, the institutional barriers to entering the field are not yet closed. Legislation, for example, has not yet crystallized the legitimacy of actors inside the field (although, this may, ultimately, occur in the Third Stage of structuration). Innovation of organizational form, therefore, is most likely to come from actors outside the field. These outside actors have not been subject to the same socialization pressures as have actors inside the field and are, therefore, more likely to challenge or question taken for granted assumptions about appropriate forms and practices.

*Stage 3:* Mature fields will be subject to high levels of structuration, will be subject to strong pressures of conformity and will exhibit relatively homogenous organizational forms. Because social pressures to conform are high, extant organizational forms are most likely to be mandated by regulation and may well be so cognitively entrenched as to form a taken for granted assumption about the most appropriate mode of organizing. One might expect a high degree of difficulty in successfully establishing a new organizational form. Such a project will require a great deal of 'institutional work' and will require its proponents to overcome many institutional barriers, including regulations and social assumptions about appropriate behavior.

Such a project will also require substantial resources, including both social and economic capital, and will likely involve central actors who occupy 'core constituencies' in the organizational field (DiMaggio, 1988; Meyer and Rowan, 1977:346-348). DiMaggio termed these central actors *institutional entrepreneurs.* DiMaggio's argument is supported by Fligstein (1990) who analyzed the evolution of corporate strategy within large US corporations.

Fligstein demonstrates how large and powerful actors within a mature organizational field were able to adopt strategic changes by virtue of their position of central authority within the field. Central and powerful actors, Fligstein argues, were the sources of change because they were able to elaborate and maintain "conceptions of control" or collectively held beliefs which were the product of the mutual interaction of individual leaders of these large organizations. Additionally, these firms had both the resources and the capacity to influence external constituents, particularly the State, and could therefore ensure the ultimate success of their adoption of a new strategic form.

These arguments, therefore, offer contradictory predictions about the locus of new organizational forms and the characteristics of their proponents in mature fields with high levels of structuration. That is, in mature fields (Stage 3), innovative organizational forms are most likely to occur in the center amongst powerful organizational actors. As well, now organizational forms that emerge during this third stage of institutionalization will be relatively difficult to legitimate and will be part of a process of revolutionary change.

The primary focus, in this dissertation, is to understand the process by which a new organizational form is established in a mature and highly institutionalized field, i.e., a field in Stage 3 of the structuration life-cycle. The argument presented above suggests that this will be an infrequent event and will require substantial institutional work. It also suggests that the change and disruption accompanying such an event will be significant and may even result in the de-stabilization of the field. That is, the change will be revolutionary. Within the context of Figure 1, this change has been characterized as a transition from Stage 3 to Stage 4 in field structuration. Unfortunately, very little is known, either empirically or theoretically, about such a transition. It is this gap in knowledge which this dissertation seeks to address. Three distinct possibilities exist (and these are depicted by dotted lines in Figure 2.1). One is the ultimate disintegration of the field. Oliver (1991) terms this process "de-institutionalization". A second alternative is the reconstitution of the field, albeit, at a higher level of aggregation and with the beginning of a new cycle of institutionalization. Yet a third, is that the original field manages to absorb the impact of the new organizational form and continues along, as before, without affecting the relative level of structuration in the field.

## Fields as 'nested' constructs

Studies of non-isomorphic change also share the observation that fields are not homogenous constructs. Rather, fields are complex entities and contain, within them, stratified communities of actors with different paths of historical development and, often, conflicting interests. Just as structuration levels seem to vary over time for a given organizational field, so, too, do structuration levels vary between organizational sub-populations within a field. That is, fields appear to be *nested* constructs wherein different sub-populations may co-exist in a relatively stable state. DiMaggio (1994) refers to these sub-populations as "communities" and argues that, even though communities within a field may share a great deal of commonality, they exert pressures on each other as a result of their inherent differences.

These communities engage in a process of co-evolution based on sharing a common resource base, a mutual technology or a united regulatory framework. At the macro or field level, this co-evolution may appear to be relatively smooth or continuous. In fact, communities within a field are in a constant process of dynamic interaction and the boundaries between them are subject to ongoing interpretation and negotiation. This is particularly evident in professional communities where, as Abbott (1988) has argued, boundaries between professional communities are under constant pressure and are continually subject to conflict and change. Moreover, "community level evolution occurs not just by speciation, but through the effacement of boundaries between communities" (DiMaggio, 1994:445). The dynamic interaction and friction between communities within a field provides an endogenous source of field level change.

There are several empirical illustrations of the nested nature of organizational fields among the previously identified studies of non-isomorphic insitutional change. Lomi (1995), in a study of the Italian banking industry, used geography as the primary variable of field level heterogeneity. Lomi argues that institutional and competitive environments of Italian banks vary dramatically by region and that this influences the founding rates of new banking organizations. Banks may be aggregated at different levels of analysis; from local to regional to national and international. At each level, banks exhibit very different strategic interests.

More significantly, Lomi observes that, at each level of aggregation, Italian banks exhibit very different processes of legitimation and that "identifiable segments of the population respond[ed] heterogenously to general competitive and institutional pressures" (Lomi, 1995, p. 147). Italian banks, Lomi concludes, are internally differentiated and that institutional processes, such as legitimation, that may appear to be uniform at a macro-level of aggregation, may be quite different when examined at a lower level. Thus, interests and motivations in adopting a new organizational form may appear to be quite uniform and non-contentious when examined at an aggregate level of analysis. However, when examined at lower levels of aggregation, the reasons for legitimating a new organizational form may be quite different between the regional groups or local communities which make up the field.

A sharper image of fields as nested constructs is drawn by Holm (1995) and his description of the creation, legitimation and decline of the Mandated Sales Organization (MSO) in the field of Norwegian fisheries. Herring fishermen in Norway engaged in collective action in an effort to gain monopolistic control over the market for their product. This "first order" collective action was intended to benefit the fishermen who comprised a relatively homogenous community of social actors. Legitimating this monopoly, however, required the cooperative participation of both the State and retail merchants. Very quickly, the field expanded its scope and became stratified by diverse social actors engaged in a common enterprise. Holm argues that the new diversity of actors and interests elevated the field to a "second order" collective action. The field became a nested system, within which the goals and interests of first order actors became submersed in the goals and interests of second order players.

The shift from a "first order" to a "second order" construct was accompanied by a shift in the ideological nature of the conflict and a shift in the institutional logic within which the conflict was expressed. First order conflicts were market driven and were expressed primarily in economic terms. Second order conflicts were primarily political and were expressed (and resolved) through political debate and legislation. Ultimately, a new organizational form, the MSO, was introduced in an effort to mollify the various aggrieved parties.

The distinction between these two levels of action is the key to Holm's "nested systems" perspective. Similar to Lomi, Holm observes that fields are composed of distinct communities of interest and the expression of institutional processes often occurs at an aggregate level wherein the tensions between groups are constantly weighed against their commonality of purpose. The interaction between these two forces provides a constant potential source of endogenous change:

> "[M]uch of the dynamics of institutional processes can be traced to interconnections between these two levels of action: the ways in which an innocent event at one level, through feedback processes to the next level, can generate completely unexpected results. Together with the double edged relation between ideas and interests, in which interests form ideas and ideas constitute interests, this means a nested systems perspective leaves much room for endogenous change (Holm, 1995, p 401).

Lounsberry (1999), similarly, has shown, within the organizational field of finance, how sub-populations of business and professional associations contribute to the ongoing project of field recomposition. Although these sub-populations share a number of common regulatory and normative influences, they differ quite dramatically in terms of their historical development, their internal "institutional logics" and their relative levels of structuration. That such differences might exist between communities in a given field is not entirely surprising. Normative understandings, state regulations and differences in the distribution of resources all contribute to stratification of social actors within a field. Most important, for our purposes, is the observation that pre-existing tensions between sub-communities within a population creates an inherent destabilizing dynamic within fields and, therefore, provides an *endogenous* source of field level change. As DiMaggio (1988:13) observes, structuration within a field creates "its own internal contradictions as unintended consequences."

The notion that organizational fields are not homogenous in terms of relative levels of structuration has important implications for understanding the creation of new organizational forms. First, it suggests that expressions of appropriate types of forms may differ between communities and sub-groups of organizations within a field. Second, it suggests that political struggles between organizational communities may shape the ultimate expression of a newly proffered organizational form. Third, it suggests that institutional entrepreneurs within a field may be those social actors with some boundary spanning capacity that allows them to move freely between communities in the field; those actors most capable of forming alliances and coalitions that span communities of interest in the field. New organizational forms may well be the political vehicle for such compromises and coalitions of actors and interests across communities in a field.

## Governance Mechanisms

Organizational fields develop sophisticated mechanisms of social control, designed to govern the actions of field members. DiMaggio and Powell (1983:148) observe that organizational fields "contain within them powerful forces" of control. Scott (1995:104-5) describes these forces of social control as "governance structures". He observes that fields vary greatly in their governance structures "ranging from the more spontaneously equilibrating operation of markets to various types of self-enforcing mechanisms, such as alliances or network forms, to externally enforced hierarchies and regulative structures" such as state regulation. In this description, Scott implicitly describes a continuum of three general categories of governance structures [that also vary according to relative levels of structuration]; market, normative and regulative governance mechanisms.

*Market* governance structures, in their pure form, are based on principles of efficiency and economic exchange, relatively free from regulative constraints. Market governance structures are based, primarily, on competitive interactions and operate through the contract mechanism. The primary goal of actors in market governed fields is the achievement of technical efficiency. In fields dominated by market based institutional logics, the dominant metaphor is based on property and the rights associated with the ownership and exchange of property. Market based governance structures are best described by institutional economists, such as North (1990) and Williamson (1975, 1985) who focus on those social structures which serve to regulate or manage economic exchange. Examples of such structures include the stock exchanges and related capital market agents such as the Securities Exchange Commission (SEC) in the US.

Perhaps the best illustration of an organizational field dominated by market based governance mechanisms is set out in Leblibici et al's (1991) description of the emergent field of radio broadcasting. The authors emphasize the critical impact of using private property as the initial metaphor for dealing with this new medium. Using private property analogies to define the field ensured that all subsequent innovations within the field would be governed by market based notions of private exchange. This is in sharp contrast to the evolution of radio broadcasting in jurisdictions like the UK and the USSR, where a normative metaphor, the public good, was used.

An important consequence of the private property metaphor amongst US field participants is that the field experienced a rapid proliferation in both the categories and numbers of social actors participating in the field. In addition to manufacturers of components and broadcast stations, "advertising agencies, independent producers, transcription syndicates, station representatives, talent agents and rating organizations grew in number" (Leblibici et al, 1991:348). The innovation of new organizational forms, therefore, was relatively easy, if not encouraged, by the market governed ideology in the field.

It is also instructive to note that corporations were the primary social actors in the structuration of this field. This is in contrast to DiMaggio's (1991) description of the field of US art-museums, where professionals and professional associations were the key social actors. It is also in contrast to the relatively large role that State organizations, including state-owned broadcasters, play in the broadcasting industry in most other nations. Finally, it is critical to note the pervasiveness of the property metaphor as the field matured. The medium of exchange or economic transactions between communities of social actors in the field became the pivotal determinant of change as the field matured. The movement from sponsored programs, to spot advertising and, finally, the exposure of national networks defined "not only the relationship between actors, but also what resources are critical, what defines success and what positions in the field are pivotal (Leblibici et al, 1991:358). As the medium of property exchange moved through these distinct stages, fundamental relationships between advertisers, broadcasters and listeners changed. The primary focus of change, however, derived from market actions and relationships and the role of the State and state agencies such as the Federal Communications Commission, or professional associations of broadcasters, electrical engineers or disc jockeys, were insignificant or relatively small.

*Normative* governance structures, by contrast, are based upon social expectations about appropriate behavior. Normative governance structures emphasize values and operate, primarily, through social processes which create "totalizing world views" (Fligstein, 1990). Illustrations of normative control mechanisms include the professions and related agencies such as professional societies or associations. In normatively dominated fields the primary metaphor is based on concpetions of "public good" or what March and Olsen (1989) describe as the "logic of appropriateness". This 'golden rule' logic compels social actors to ask, "Given my role in this situation, what is expected of me?"

(Scott, 1995:39). The primary goal of social actors within a normatively dominated field is achieving legitimacy or normative acceptance and the primary mechanism is through mimetic adoption of what is viewed to be appropriate behavior (DiMaggio and Powell, 1983).

DiMaggio (1991) provides an illustration of a normatively governed field in his description of the creation of contemporary US art-museums. Museum professionals were the primary change agents involved in re-shaping this organizational form:

> "The role of professionals is central…[T]hey dominated both reform efforts and fieldwide organization." (DiMaggio, 1991:269)

Moreover, the dominant institutional logic, in legitimating the new form of museum and in wresting control of the field from elite and wealthy patrons, was based on rhetoric about the public good. Proponents of the new form argued that museums ought to be more "democratic" and should be for the "common man" (p. 285). Similar to the radio broadcasting industry, considerable debate was devoted, at early stages of field formation, to finding the appropriate metaphor for the new organizational forms. A wide variety of potential models were used and actors debated "whether the museum was more likened to the library, the department store or the symphony orchestra" (p. 287).

*Regulative* governance structures are, perhaps, the most familiar form of governance and are best illustrated by State intervention through legislation. Highly regulated fields are most often areas where public policy concerns invite close monitoring and control by the State such as education (Meyer, Scott, Strang and Creighton, 1994) and health care (Scott, 1995). For fields dominated by regulative forms of governance, the primary metaphors are political and the primary mechanisms of action are based on hierarchical power, rules and legislation and the potential for coercive action. The primary goal in fields dominated by regulative governance structures is the assimilation of power and the exercise of control over field participants.

Fligstein (1985, 1987, 1990) offers an illustration of an organizational field dominated by regulative governance mechanisms. In describing the emergence a new corporate form of very large multi-divisional, diversified and multinational organizations, Fligstein emphasizes that, once the field was stabilized, the focal point of social actors was the need to control internal and external environments. Fligstein terms this defining institutional logic ""conceptions of control" and argues that, as a field coalesces, market based influences such as competition begin to fade and actors start to focus on "articulat[ing] a set of rules to control the field and be willing and able to enforce those rules" (Fligstein, 1990, p. 6).

Clearly, the State plays a critical role in fields dominated by a regulatory governance scheme:

> "[The State] sets the rules by which actions in the economy are carried out. It is one thing to say you are in favor of free markets, and quite another to actually define what a free market is. That definition has shifted over time and the dispute has primarily been between firms and the state. Laws regarding incorporation, anti-trust and the regulation of various industries are important aspects of state definitions. The state also affects the economy by consuming products, intervening in the business cycle and providing for the redistribution of income through taxation and social expenditures" (Fligstein, 1990: 23).

Fligstein describes how large corporate social actors influence the state and create a legal and regulatory setting which consolidates their power within the field. The ultimate expression of this institutional work was the establishment of the multidivisional (M-Form) corporate form.

The mutual interaction of market, state and professional governance mechanisms, therefore, provide a dynamic method of social control within an organizational field. This is based on the assumption that all three forces co-exist and mutually determine compliance in inter-organizational relations. There is no necessary assumption about the relative primacy of one or another of the governance mechanisms, but that, in stable organizational fields, they exist in a state of dynamic equilibrium. Characteristics of each of the three governance mechanisms are depicted in Figure 2.7.

**Figure 2.7: Characteristics of Market, Normative and Regulative Governance Mechanisms in Organizational Fields**

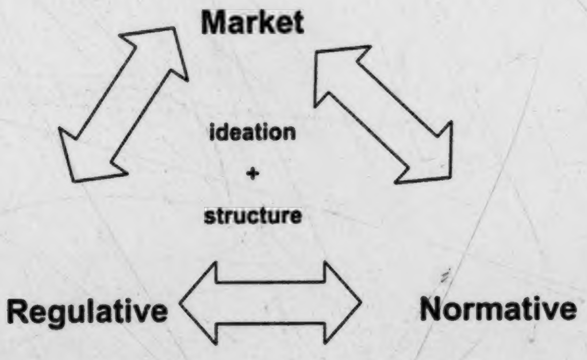
| | Type of Dominant Governance Mechanism | | |
|---|---|---|---|
| | **Market** | **Normative** | **Regulative** |
| **Structuration Level** | **Low** | **Medium** | **High** |
| **Stage of Development in the Life Cycle of the Field** | **Early** | **Mid** | **Mature** |
| **Primary Mechanism of Social Action** | **Economic** | **Professional** | **Political** |
| **Primary Objective of Social Action** | **Technical Efficiency** | **Legitimacy** | **Power** |
| **Dominant Institutional Logic** | **Exchange<br>Private Property** | **Association<br>Public Good** | **Compliance<br>Public Order** |

It is important to note, however, that although there is no necessary presumption about the absolute priority of any one of the three governance mechanisms, in practice, fields appear to be dominated by a single mode of governance. That is, most organizational fields will exhibit the simultaneous influence of all three forms of social control but, at any given time, a single mode will exert the most influence. Thus, in Leblibici et al's (1991) study, even though there is some evidence of state influence in initially establishing the legislative framework for field level interaction, the primary institutional logic of the field was based on principles of market governance. Similarly, DiMaggio's (1991) study demonstrates the important influence of market-based constraints in defining contemporary art-museums, particularly the role played by consumers of fine art.

He similarly acknowledges the role of the state in assisting professionals in their efforts to gain control over the field. In spite of these influences, however, normative and professional controls clearly played a critical role in defining interactions and determining outcomes in this field.

It is apparent, therefore, that the three governance structures, although in a state of equilibrium, are not necessarily in a state of even balance. One mode of social control will dominate. The equilibrium is inherently unstable as any change (i.e., increase or diminution) in the relative contribution of any one form of governance necessarily elicits a response from the remaining mechanisms. The dynamic interaction of governance mechanisms in organizational fields is represented in Figure 2.8.

**Figure 2.8**
**Market, Regulative and Normative Governance Structures in Organizational Fields**



There is also a suggestion that different governance mechanisms are more likely to predominate at different stages of structuration in the life cycle of an organizational field. DiMaggio and Powell (1983:148) observe that, in the very early stages of field formation, market forces are the primary governance mechanism and provide the primary source of rationalization for organizations. Because organizational fields become more highly structurated over time, professions and the state "have become the great rationalizers of the second half of the twentieth century" (DiMaggio and Powell, 1983). This suggests a natural progression of modes of governance from markets to professions and, ultimately, to the state as an organizational field matures.

This notion gains some support from DiMaggio's (1991) study of the development of art museums. Market influences, such as increased consumer demand and an influx of funding from a broad variety of sources, were significant determinants of the movement away from the prevailing model of museums as elite, curatorial organizations. Normative factors, particularly professional controls, dominated the field as a new model for museums emerged. DiMaggio emphasizes the role of professional controls in his account. The time frame of his study does not permit a description of the evolution of art-museums to a regulatively dominated field. This may, however,be inferred from contemporary studies of museums which demonstrate the dominant role played by the State (Oakes, Townley and Cooper, 1998).

Additional support for the argument that market forces predominate in the early stages of field formation can be found in Holm's (1995) study of Norwegian fishing. Initial attempts to organize the herring market arose from fishermen as an economic response to a market crisis. Initial efforts to deal with the situation arose, primarily, in the economic sphere and consisted of a crude attempt to establish a monopoly over the supply of herring. Over time, it became apparent that such a monopoly could not be effected without the co-operation of other interest groups, particularly retail merchants. The focal project in the field, then, turned to a series of normative debates about the appropriateness of such a monopoly. Part of this involved legitimating the MSO organizational form. Using only normative constraints (i.e., without invoking the power of state sanction) the fishermen "successfully organized the herring trade for two years without legal protection" (Holm, 1995:399). Ultimately, however, state legislation was needed to balance the conflicting interests of fishermen and retail merchants.

Studies of non-isomorphic institutional change also suggest that, over time, organizational fields are subject to periodic shifts in the dominant mode of governance. Organizational heterogeneity, or the production of new organizational forms, is related to the occurrence of these shifts in configurations of social control. Such shifts in social control imply shifts in the institutional logics that underpin organizational fields (Brint and Karabel, 1991). Changes in governance represent lapses of control and imply changes in the 'rules of the game', reconfigure social boundaries between actors and reallocate resources within the field. Such shifts can create "opportunity fields" (Brint and Karabel, 1991:348) for certain social actors and create, not just new market opportunities, but new markets (Van de Ven and Garud, 1989; Powell, 1991).

Perhaps the best illustration of how shifts in governance lead to institutional change and create the opportunity for new organizational forms comes from Hoffman's (1999) description of the emergence of corporate environmentalism from 1966 to 1993. Hoffman tracked trade journal accounts of environmental issues in the US chemical industry over this time period and coded such accounts according to their relative emphasis of normative, regulative or cognitive aspects of environmental issues. Hoffman found that the organizational field evolved through four distinct stages. The first stage, which Hoffman describes as "emergent", corresponds roughly with what is described here as a market-dominated governance regime. Industry journal articles recognized the growing importance of environmental issues but emphasized the role of independent corporate action and advances in technology in dealing with the problem:

> "The dominant theme was that the environmental issue was a problem that could be solved independently through the industry's own technological prowess. Fifty-five percent of *Chemical Week's* environmental articles and 66 percent of its industry specific articles dealt with technology (Hoffman, 1999: 359)."

Consistent with market based assumptions of action, the primary social actors were assumed to be private corporations, the ultimate goal was to achieve productive efficiency and efforts to achieve clean environmental production were associated with higher profits.

The second phase Hoffman describes as primarily a regulative dominated organizational field. The state established the Environmental Protection Agency (EPA) as an industry watchdog and enacted key legislation designed to force compliance with federal standards. This shift in the dominant mode of governance was accompanied by tow new organizational forms; government environmental organizations, such as the EPA and a wide range of consumer interest groups or non-governmental organizations interested in environmental issues. The third stage, described by Hoffman as a normative phase, focused on creating normative compliance between these three groups of social actors (NGOs, State environmental agents and private corporations). No new forms of organization were added, but "interaction patterns among constituents were shifted" (Hoffman, 1999: 361). The relative lack of success of these efforts caused the field to move quickly to a fourth, cognitive phase in which yet another category of social actor was introduced. Insurance companies, which had previously ignored environmental protection issues, quickly became significant players in the field. In fact, Hoffman states that there is little evidence to support the "cognitive" designation of this phase of the environmental field because "cognition is extremely difficult to measure." He concedes that the fourth stage may actually represent a return to characterizing environmental issues in a market based rhetoric wherein environmentalism is promoted because it makes economic sense. Advocates used phrases like "green line equals bottom line" to argue that good environmental practices actually promote organizational efficiency in chemical manufacturing.

Leblibici et al (1991) also provide evidence for the association between shifts in governance and institutional change. The authors observe how shifts in the "institutionalized medium of exchange" over three phases in the structuration of the field of radio broadcasting served to redefine the field. Such shifts in institutional logic redefined "not only the relationship between the actors, but also what resources are critical, what defines success and what positions in the field are pivotal (Leblibici et al, 1991:358). Moreover, each shift between periods of structuration served to reshape and re-define the actors in the field moving some (manufacturers) to the periphery, bringing in others from outside (advertisers) and creating new ones (producers). The authors similarly observe that successive movements from one stage to another provide the contextual opportunity for change by ""redefining the dominant players, the critical resources they compete for and the medium of their transactions" (Leblibici et al, 1991:358). Shifts in dominant conventions, thus, created "cycles of transformation" within the field and, in the process, formed an endogenous method of institutional change.

## Governance and Legitimacy

There is an observable connection between field level governance and legitimacy in the creation of new organizational forms. Weber (1924) observed a causal link between social order and the legitimacy of social action in the emergence of bureaucratic organizations. The rising dominance of bureaucracy, Weber observed, was accompanied in a shift in the mode of social control, from one based on traditional and charismatic authority to one based on legal and rational authority. The shift in social control was also accompanied by a change in the dominant source of organizational legitimacy, from traditional values based on personal charisma to legal maxims and scientific rules embedded in reason and law.

Legitimacy and processes of legitimation, therefore, are an essential part of the creation of new organizational forms (Aldrich, 1999; Suchman, 1995; Hannan, 1986). In spite of its centrality to organization theory, however, legitimacy remains a poorly understood construct. In perhaps the most comprehensive review of legitimacy in organization theory, Suchman (1995) acknowledges that there are multiple perspectives regarding legitimacy within various schools of organization theory that threaten to 'balkanize' its debate:

> "...research on organizational legitimacy threatens to degenerate into a chorus of dissonant voices, fragmenting scholarly discourse and disrupting the flow of information from researchers to practitioners" (Suchman, 1995: 572).

Within the theoretical cacophony, however, the concept of legitimacy has become a central component to three distinct schools of organization theory; resource dependency, population ecology and institutional theory. Each will be discussed in turn.

*Resource Dependency Theory:* Resource Dependency theorists adopt a functionalist view of legitimacy which treats the construct as a valuable social resource which can be exploited by organizations to acquire additional material resources. Legitimacy, in this view, confers a particular social status on an organization that is used to attract material resources and political support necessary to achieve superior performance (Pfeffer and Salancik, 1978). Legitimacy, in the resource dependency view is "bounded up with social norms and values" (Pfeffer and Salancik, 1978: 193) and involves aligning the norms and values of the organization with those of the larger social system (Dowling and Pfeffer, 1975).

The Resource Dependence approach identifies three broad aspects of legitimacy that may be, roughly, related to the three modes of governance described earlier in this chapter. Pfeffer and Salancik (1978) observe that, in addition to emphasizing norms and values, legitimacy includes elements of both regulative and economic viability. Adherence to formal law provides one aspect of legitimacy. Similarly, economic demand can make an activity legitimate, even if not recognized by normative custom or regulation (Pfeffer and Salancik point to the production and selling of liquor during prohibition as an illustration). Together, economic (market), normative and regulative (state) components of society provide an overlapping framework of legitimacy sources:

> "Legitimacy is bound up with social norms and values; and while it is not correlated perfectly with either law or economic viability, it bears some relationship to both. Actions or organizations may be legitimate, even if they are not specifically provided for in the law...Similarly, many economically viable activities are neither legitimate nor legal, such as

> selling narcotics. There are also instances when activities are both legitimate and economically viable, though not legal, such as the production and selling of liquor during prohibition. If an activity is legitimate to a large enough section of the population, it will probably be economically viable as well" (Pfeffer and Salancik, 1978: 193).

Legitimacy is conferred by reference to a combination of legitimating sources involving mixtures of legal, economic and normative acceptance.

*Population Ecology:* For population ecologists, legitimacy is also associated with issues of social control. Singh and Tucker (1986: 173) state that organizational legitimacy involves "having their actions endorsed by powerful collective actors." New organizational forms often defy the rules of social acceptance of powerful organizations and, therefore, are less likely to survive. That is, they suffer from a 'liability of newness'. Legitimacy increases the survival rate of new organizations by connecting the organization to resources controlled by other, powerful actors (Carroll and Hannan, 1989).

Population ecologists use the density of an organizational form within a population as a proxy for measuring legitimacy. That is, the increasing frequency of a particular organizational form serves as a measure of its legitimacy within that environmental niche. This methodology has produced considerable criticism from those who argue, among other things, that the proxy does not adequately account for social processes involved in accepting or rejecting a new organizational form (Young, 1988; Donaldson, 1995; Baum and Powell, 1995).

Contemporary ecological approaches have moved away from singular reliance upon density dependence measures as a proxy for legitimacy (Aldrich and Fiol, 1994; Aldrich, 1999). Aldrich (1999: 228), in particular, has adopted Suchman's more inclusive definition of legitimacy that "incorporates cognitive and evaluative dimensions". Legitimacy is defined as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions.

In detailing his notion of legitimacy, Aldrich defines three basic types of legitimacy; moral, regulative and cognitive. Each of the types corresponds broadly with Scott's (1995) description of 'pillars' of institutional theory. Cognitive legitimacy is a symbolic form of legitimacy and makes certain organizational forms or practices so accepted that they become unquestioned or taken-for-granted. Regulatory legitimacy, similar to that identified by resource dependency theorists, refers to adherence to formal rules and regulations established by government authorities. Moral legitimacy, similar to the 'social legitimacy' proffered by resource dependency theorists, for Aldrich refers to adherence to culturally accepted norms, values and beliefs held in the broader social system.

These categories of legitimacy refer, generally, to different sources of legitimacy embedded in the environment in which organizations exist. New organizational forms, according to this view, are dependant upon a variety of sources of legitimacy in their efforts to survive.

*Institutional Theory:* Institutional theorists have, arguably, devoted the most empirical attention to the construct of legitimacy. Organizations, according to this view, conform to normative and coercive pressures contained in the existing social structure (Meyer and Rowan, 1977; DiMaggio and Powell, 1983; Scott, 1995). By adapting to institutionalized pressures to conform, organizations gain legitimacy (Suchman, 1995). Legitimacy, from an institutional perspective, "refers to the degree of cultural support for an organization – the degree to which the array of established cultural accounts provide explanations for their existence" (Meyer and Scott, 1983: 201).

Two writers best capture the institutional perspective on legitimacy; W.R. Scott and M. Suchman. Scott (1995; 2001) identifies three distinct sources of legitimacy for organizations. From an institutional perspective legitimacy is "a condition reflecting perceived consonance with relevant rules and laws, normative support or alignment with cultural-cognitive frameworks" (Scott, 2001: 59). These three categories of sources of legitimacy correspond with Scott's three 'pillars' of institutionalism; regulative, normative and cognitive. Regulative legitimacy involves correspondence with formal rules, i.e., relevant laws and regulations. Normative legitimacy requires adherence to accepted values in the organizational community. Cognitive legitimacy arises from common world views and "pre-conscious, taken for granted understandings" (Scott, 2001: 61) about the overriding social structure.

Suchman (1995) also identifies three distinct categories of legitimacy. One such category bears a close relationship to one of Scott's 'pillars'. Moral legitimacy, which rests upon normative assumptions about the "right thing to do" (p. 579), is strikingly similar to Scott's notion of normative legitimacy. Suchman also identifies a category of 'pragmatic' legitimacy that relates, generally, to the economic performance of an organization. Pragmatic legitimacy is based upon material exchange in which social standing relates directly to superior access to resources. Finally, Suchman proposes a category of 'structural' legitimacy that focuses directly on the external, observable form of an organization. Organizations that adopt structural characteristics that conform to an accepted, pre-existing template are more likely to achieve legitimacy.

The categories or types of legitimacy presented in this summary contain many similarities that cross boundaries between the three theoretical perspectives discussed here. These similarities will be analyzed in considerable detail in Chapter Five below. For the moment, it is sufficient to make the general observation that all three perspectives share an assumption that legitimacy is central to understanding the emergence of new organizational forms and the more particular observation that different types of legitimacy are linked to different types of social authority or governance. That is, periodic shifts in dominant modes of governance are also accompanied by changes in the sources of legitimacy within an organizational field. Moreover, actors who promote change and actors who resist change will be expected to each adopt different strategies of legitimation involving appeals to different forms of governance within the field.

## Summary and Conclusion

Collectively, these studies provide general support for the observation that, over time, organizational fields are subject to periodic shifts in field governance. They also suggest that organizational heterogeneity, or the production of new organizational forms, is related to the process by which one form of social control, within an organizational field, is replaced by another. Finally, each study demonstrates that fields are not homogenous constructs, with smoothly distributed isomorphic pressures. Rather, fields are complex and heterogeneous constructs, subject to uneven degrees of structuration and populated by sub-groups or "communities" of stakeholders with different histories, varying trajectories of evolution and conflicting interests.

Implicit in this overtly political model of institutional change are some important assumptions. First, because new organizational forms represent compromises among diverse interests, there is no necessary implication that a new organizational form or practice will be successful simply because it is more efficient, in a technical sense, than alternate forms. Rather, a successful organizational form will more likely reflect an 'efficient' balancing of interests or an effective compromise, than a technologically superior form. Similarly, a successful organizational form will be legitimated by effectively using an institutional logic that is consistent with the dominant mode of governance for that field. Finally, because new organizational forms are ongoing projects of diverse interests and compromises, their creation will have unintended consequences (Selznick, 1949) not anticipated by their creators or their competitors and poorly understood by social actors in the field during their emergence. In this manner, the emergence of a new organizational form represents a 'sense-making' exercise by social actors within an organizational field (Weick, 1979).

Organizational researchers have a limited understanding of the process by which new organizational forms are created, particularly in the context of mature and highly structurated organizational fields. The emergence of multi-disciplinary partnerships (MDPs) in the legal profession provides an opportunity to gain rich insights into the sources of organizational innovation and the processes by which diverse social actors come to terms with a new organizational form. Moreover, it provides the opportunity to observe the manner in which these actors influence the ultimate shape of a new organizational form and, thereby, protect their own self-interest. In a broader sense, it offers an opportunity to empirically examine the co-evolution of occupational communities within an organizational field.

# CHAPTER THREE

# SITE ELABORATION AND RESEARCH METHODS

## Introduction

The previous chapter described a conceptual framework designed to analyze the institutional processes by which new organizational forms are created. This chapter has two objectives. First, the empirical context of this dissertation will be elaborated. Specifically, this chapter begins by providing an overview of the legal profession and a justification for using this particular context to address the research questions identified in the previous chapter. The second objective of this chapter is addressed in Section 2, which describes the methods used in this research. Several justifications for adopting the case study method are described. Data sources, which include archival materials, interview data and direct observation, are detailed. Finally, the chapter describes the proposed method of analysis of the material including issues about coding and interpreting the data.

## Site Elaboration

### Why MDPs in Law?

There are several justifications for using the emergence of MDPs in the legal profession as the site for conducting this research. Perhaps the strongest of these is the observation that law firms exist in a highly institutionalized setting. Most research into institutional change has focused on processes of convergence in fields that are in the midst of structuration (i.e., Stage 2 of the Stages of Institutionalization described in Chapter 2). Very little research has elected to focus on processes of change in a mature setting (i.e., Stage 4 of the Stages of Institutionalization described in Chapter 2). My interest is in explaining change in a highly institutionalized setting, of which law is a strong example.

Similarly, few studies in institutional theory have examined, directly, the issue of new organizational form creation in mature fields. This may be explained, in part, by the uniqueness of this phenomenon. It is relatively rare for organizational researchers to be given advance notice of the emergence of a new organizational form. Yet, because regulatory and normative pressures in the legal profession are so strong, and because the creation of composite professional firms represents so significant a threat to lawyers, the creation of MDPs generated considerable debate and rhetoric *before* an extant version of the form existed. The creation of MDPs in law, thus, affords a rare opportunity to analyze the institutional processes of new form creation *in situ* as the process unfolds.

## The Institutional Context of the Legal Profession

Like most professions, North American lawyers exist in a highly institutionalized environment. Prior to the mid-1970s, the profession had experienced a long period of stasis and achieved a high level of autonomy from both the State and from other professions (Abbott, 1988; Halliday, 1987). Legal scholars refer to this long period of stability and growth, which began around the turn of the century, as the 'golden age' of law (Galanter and Palay, 1991). A consequence of this stasis is that the profession has been subject to long standing isomorphic pressures and, as a result, has achieved substantial convergence on issues of professional identity and organizational form. The profession exhibits surprisingly high levels of conformity around mechanisms of professional autonomy (Smigel, 1964, Powell, 1985, 1988; Halliday, 1987), human resource practices (Gilson and Mnookin, 1988; Nelsen, 1988) and organizational form (Galanter and Palay, 1991).

Regulatory structures within the profession are highly isomorphic. Nearly all legal jurisdictions across North America permit a high level of self-regulation for lawyers with local law societies or bar associations given statutory authority to engage in processes of peer review and discipline (Halliday, 1987; Powell, 1985, 1988). Changes within this framework move quickly across jurisdictions, both in Canada and the US. The removal of restrictions on advertising by lawyers, for example, originated in Arizona in 1977 and, by 1982 had diffused across all jurisdictions in North America (Trebilcock, 1982).

The organizational form of law firms and their internal human resource practices are also remarkably consistent across jurisdictions. Nearly all lawyers in private practice in North America, for example, organize themselves in partnerships (Galanter and Palay, 1991; Gill, 1988; Stager and Arthurs, 1990). Similarly, most law firms have a simple internal structure in which, in general, there are only two classes of professionals; associates, who are salaried employees, and partners, who own the firm and share in the profits. Associates aspire to partnership and, in what has been described, alternatively, as the 'Cravath' system or the 'up-or-out' system, those associates who fail to make partner are encouraged to leave the firm (Hoffman, 1973). Billing practices within law firms are also highly isomorphic across jurisdictions. The majority of firms assess fees by the 'billable hour', or as a fixed rate multiplied by the amount of time spent on a client's work, rather than charging a flat fee or a fee based on a percentage of the project value (Smigel, 1964; Galanter and Palay, 1991). Most important, perhaps, is the observation that lawyers organize their practices in isolation from other professions. That is, only *lawyers* occupy significant positions in law firms.

These managerial practices exist as taken-for-granted assumptions about appropriate organizational forms for law firms. They are so prevalent and consistent across time and space that researchers have used the characteristics to delineate a professional archetype, the $p^2$-form (Greenwood, Hinings and Brown, 1990). The archetype describes an emphasis on collegiality, peer evaluation and autonomy, a primary focus on professional standards, low financial accountability and a low priority placed on strategic planning. Similarly, professional firms place relatively low emphasis on market or efficiency oriented organizational controls and, typically, place greater importance on issues of professional competence and ethics than might be expected in a more corporate form of organization.

Such highly isomorphic regulatory and organizational practices reflect the high degree of institutionalization within the legal profession. North American law firms exist in a highly structurated environment, with highly institutionalized systems of education and credentialing, strong pressures for conformity in managerial and professional practices and tight coupling between organizations and institutional structures such as law schools, the judiciary and supporting state agencies (Tolbert, 1988; Zucker, 1991). As with most professions, normative controls clearly predominate the matrix of governance within law (Scott, 2001). Still, the influence of all three forms of governance can be identified within the context of the legal profession. Each is outlined in turn.

*State Governance Mechanisms:* The state clearly plays an important role in controlling the activity of social actors in the field. Part of the *quid pro quo* of the "regulative bargain" (Robson, Wilmott, Cooper and Puxty, 1994) that granted the legal profession an exclusive market jurisdiction for legal services, is an acknowledgement of the state's residual right to control the professions. Legislatures, thus, enact overriding enabling legislation which grants lawyers exclusive jurisdiction to provide legal services and also delegates to local bar associations the right to license and discipline members (Powell, 1985; Halliday, 1987). For a considerable time, the state was reluctant to encroach on the professions right to self govern.

*Normative (Professional) Governance Mechanisms:* The historical reluctance of State regulators to intervene in the day-to-day regulation of lawyers has given the legal profession an enviable degree of self-regulation and autonomy. Indeed, the right to autonomous self-regulation has become one of the defining characteristics, at least amongst structural functionalist theorists, of the professions (Greenwood, 1957; Goode, 1960). Attributes of self-regulation include peer review (Friedson, 1983) the right to control admission to the profession (Abbott, 1988), the right to create internal codes of conduct and codes of ethical behavior and the right to impose sanctions on members who contravene those codes (Larson, 1977).

Most writers acknowledge that normative or professional governance mechanisms are the dominant mode of social control in the legal profession (Abbott, 1988; Scott, 2001). Lawyers undergo extensive socialization pressures both in law school and in the early years of practice (Heinz and Laumann, 1982). As Abel (1997:121) observes, "the exhausting training [lawyers] must complete might better be understood as conspicuous sacrifice justifying future privilege, rather than the inculcation of technical skill." Educational materials rely heavily on reinforcing norms and values of an "elite" occupational group (Powell, 1988). The professional "project" (Larson, 1977) is directed, primarily, at disseminating the attitudes, assumptions and beliefs about professional status and legitimating an occupational role (Abel, 1997).

*Market Governance Mechanisms:* An overriding objective of the "professional project" of state delegated normative controls is to limit the influence of market controls in the delivery of legal services. As Halliday (1985: 284) observes, there exists:

> "a deep tension between professional authority and the freedom of consumer choice which must govern market exchanges. In ideal markets there are no authority or dependence relations which tie buyers and sellers to one another; rather buyers and sellers operate independently of one another, and of other buyers and sellers, and prices are set by levels of supply and demand. Professionalism, however, with its emphasis on the authority of the professional and its orientation toward collegial regulation, necessitates a departure from the rule of the market."

The result has been that, for a number of years, the legal profession has operated with considerable insulation from market-based pressures. This insulation was actively endorsed by the state. Bar associations were permitted the right to set fees and were exempt from most anti-trust legislation (Halliday, 1985). Similarly, efforts to challenge the authority of professional associations to govern the market and their members were, typically, dismissed by the courts (Bierig, 1983).

*Shifting Governance Mechanisms:* There is considerable evidence, however, that the influence of normative governance mechanisms are diminishing under growing pressure from both state and market based governance mechanisms. Since the 1970s, for example, there has been an increasing tendency of both the state and the courts to intervene or actually challenge self-governance regulations in the legal profession (Barber, 1978; Schneyer, 1983). In Michigan, in 1970, the state government removed the capacity to discipline lawyers from the state bar association and created a government agency to handle the task (Schneyer, 1983). As a response to the threat of direct state regulation, by the 1980s most state and provincial bar associations had opened up disciplinary committees to members of the public (Powell, 1985).

The courts, similarly, now seem less willing to support the monopolistic character of professional self-regulation and have actively encouraged the introduction of market influences into the profession. This tendency is best reflected in two significant decisions. In 1975 a decision of the US Supreme Court denied the right of lawyers to set minimum fee schedules (*Goldfarb* v. *Virginia State Bar*). This contradicted previous decisions which exempted law from antitrust legislation and had the effect of throwing open the floodgates of market competition between lawyers. The second decision, in 1977, overturned professional restrictions on the right of lawyers to advertise for services (*Bates* v. *State Bar of Arizona*). This too sent an important message within the profession that market principles of open competition could exist within an autonomous profession (Abel, 1997).

*Increasing Competitive Pressures:* The reduced capacity of the legal profession to insulate itself from market pressures has intensified a number of internal competitive pressures. The number of lawyers has increased dramatically as the 'baby boom generation has matured (Gill, 1988). Abel (1997) reports that the number of US lawyers doubled between 1950 and 1980 and is likely to do so again early in the new century. Canadian statistics show a similar trend (Gill, 1988). In Alberta, the proportion of lawyers to general population has grown from approximately one lawyer per 1000 people in 1975 to one lawyer per 250 people in 1998 (Law Society of Alberta, 1999). Economic analyses in Canada suggest that the market for legal services is becoming increasingly competitive (Gill, 1988; Stager and Foote, 1989). This is supported by anecdotal evidence from law school admission pamphlets that, in the late 1970s, started adding a caveat to admission pamphlets which stated that admission to law school did not guarantee an articling position in the profession and, therefore, did not ensure a legal career.[1] The Canadian Bar Association, on several occasions in the 1980s, circulated proposals to limit the number of law school positions in an effort to reduce competition (McLaughlin, 1991).

Accompanying these changes in the dominant mode of regulation in the legal profession, and the pressures of competition, have been significant changes in the mode of organization of law firms. Foremost among these changes is a rapid increase in the size of law firms (Galanter and Palay, 1991). Although large law firms emerged as a distinct form of practice around the turn of the century, it has only been in the last fifteen to twenty years that "the big firms have undergone a series of striking changes aptly described as a transformation" (Galanter and Palay, 1991). In 1950 only 38 law firms in the US had more than 50 lawyers. By 1985 there were more than 500 such firms, most of which had established offices in two or more countries (Spar, 1997).

The incursion of market based governance mechanisms, at the field level, has been reflected inside these firms through significant deviations from the $p^2$-archetype. The up-or-out promotional system is being challenged by firms that are experimenting with permanent associates, contract lawyers and even part-time partners (Morris and Pinnington, 1998). The internal socialization of lawyers through extensive apprentice programs has been abandoned as law firms, increasingly, hire associates and partners laterally, from other firms (Galanter and Palay, 1991). Similarly, competitive pressures have encouraged large firms to abandon the tradition of hiring from elite schools and within defined racial and gender categories (Gilson and Mnookin, 1988). Large law firms have attempted to introduce more business management principles into their firms including "mission statements, objective setting, strategic planning, marketing, business teams, profit centers, performance appraisal, market niches and so on" (Powell, 1991).

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[1] Such notices first appeared in 1978 at the Faculty of Law, University of Alberta.

The organizational changes cited above are part of the historical process in which the MDP organizational form emerged. It was in this context that, in 1997, the international accounting firm Ernst & Young announced that it had 'bought' Donahue and Partners, a corporate commercial law firm in Toronto (Middlemiss, 1997).[2] Donahue and Partners is still a separate legal entity from Ernst & Young because law society regulations do not permit outside ownership of law firms. The law firm is housed in the Ernst & Young tower on Bay Street in Toronto. The firm describes its affiliation with Ernst & Young on its letterhead and permits Ernst & Young to 'supply' administrative, secretarial and technical support. The law firm, however, bills and collects its own accounts (Fitz-James, 1999). Donahue and Partners established an office in Alberta in 1998.

The establishment of a law firm by a firm of accountants is the first such event in North American history and has generated significant, and sometimes acrimonious debate. The aggressive move by accountants into the protected jurisdiction of lawyers represents the most significant disruption of the 'golden age' of professionalism by lawyers since the turn of the century (Galanter and Palay, 1991). The creation of Donahue and Partners was announced whilst regulators in both professions were still debating the merits of MDPs and struggling with the issue of how they would be regulated (Middlemiss, 1997). The event hastened the commission of studies by law societies in both Ontario and Quebec and quickly moved the issue onto the agendas of law societies in British Columbia and Alberta. The event received note in the American Bar Association's standing Committee on Multidisciplinary Practice and encouraged the ABA to reject plans to allow MDPs and "end the civil disobedience of the Big

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[2] Initial press releases by Ernst and Young used the term 'bought'. Later public references to the law firm by Ernst & Young described the relationship as an "association".

Five" (Fox Testimony, ABA *Commission on Multidisciplinary Practice*, Wahsington, D.C., March 11 1999).

The creation of a captive law firm and the ongoing debate about MDPs, therefore, offered an ideal opportunity to study the institutional processes surrounding the emergence of a new organizational form. Details of the methodology follow.

## Methods

### Research Design

Using the emergence of multidisciplinary practices in the legal profession as an empirical context for understanding the processes by which new organizational forms are created generates a number of methodological issues. Foremost, the phenomenon is complex, with a multitude of actors and potential causal influences. The phenomenon also involves a significant historical component where present changes must be measured against long-standing institutional practices. As well, the phenomenon is unique inasmuch as it represents a significant disruption or departure from taken-for-granted practices and institutionalized patterns of behavior. Finally, although the literature in institutional theory has offered considerable conceptual definition of the process by which this change might unfold, there is no means of determining, *a priori*, whether the conceptual framework or anticipated theoretical relationships between governance and institutional change would hold. Given the complexity of the phenomenon and the uniqueness of the process under consideration, a qualitative case study method was selected for this research.

*Why a case study?* There is considerable confusion in the methodological literature about the precise nature of the case study. At least three distinct characterizations of case studies exist. Some, such as Stake (1994), observe that the case study is not so much a choice of methodology as it is a choice of an *object* to be studied. That is, once a researcher decides to analyze any bounded social system (i.e., an organization, subculture or family), he or she is conducting a case study. Advocates of this view also support a distinctly constructivist epistemology and state that case research is, fundamentally, reflective and interpretive (Schon, 1985).

Others, led by Yin (1984), argue that the case study is both the object of analysis and a distinct *method* of conducting social research. In this context, case research is an essentially positivist analysis and seeks to measure causal relationships between social processes and outcomes through the application of explicitly developed instruments, protocols and related research instruments (Eisenhardt, 1989).

The third characterization is that case studies represent a *frame* within which social research is to be conducted (Stoecker, 1991). In this context case studies are represented as a framework of time, structure and geography within which data collection can occur. Within such boundaries, social researchers may adopt a wide variety of specific methods to obtain the required information. In this sense, a case study is less a method than it is a design structure that houses other methods.

In spite of these underlying differences in characterization, the three approaches to case studies share a number of commonalties that reinforce the case method's appropriateness in this research context. These are elaborated below.

*Uniqueness:* Stake's (1994) observation that choosing to perform a case study is more a choice of object to be studied than it is a methodology is, in large part, a recognition that case studies are often dictated by the choice of empirical phenomena to be studied. When a researcher elects to study a rare and unusual event, that choice often excludes other research methodologies, such as surveys or experiments, where the intent is to isolate common characteristics of the phenomena and make comparative analyses. Clearly, comparisons cannot be made when the phenomena is singular and unlikely to be repeated in precisely the same way. Similarly, a researcher cannot isolate common characteristics of a phenomenon that has never occurred before, and is unlikely to be re-created in precisely the same way in a different time and place. The rarity and uniqueness of an event, therefore, dictates the choice of a case study as the appropriate methodology.

The justification of using a case study for unique events is drawn, largely, from medical research and, specifically, from psychiatry. Freud (1932) defended the use of extreme cases in psychoanalysis with the observation that a careful analysis of one case of extreme deviance can often contribute more to our theoretical understanding of a process than analysis of a thousand instances of 'normal' behavior. This argument holds particular relevance for research in institutional theory where the prevailing assumption, outlined in the previous chapter, is of ongoing convergence of norms, behaviors and organizational forms. Deviations or disruptions in this process are apt to be more revealing, and contribute to our theoretical understanding of the process of institutionalization, than ongoing analyses of a 'normal' instance of convergence. As Barley (1995) observed in an analysis of processes of micro-institutionalization of roles amongst radiographic technicians and physicians, insights were achieved primarily from a disruption in the routine of role consolidation by the introduction of new technology. This unique event served to 'tear the institutional fabric' and afforded a rare opportunity to view the dynamics that underlie the veneer of instititionalization.

The uniqueness of the introduction of MDPs has been described above. The event has held significant meaning for lawyers, accountants and regulators and has generated significant publicity in North America (Middlemiss, 1998) and Europe (Hamilton, 1999). The introduction of MDPs into the legal profession represents a substantive form of deviation in organizational practice and normative behavior. As such, it signifies a unique event with its own history and context, from which we may gain some understanding of the process by which new organizational forms are created and sustained in a professional community. The case study method is, therefore, dictated by this choice of a social object of study.

*Research Questions:* Using a case study is also justified by the type of research questions set out in this dissertation. Recall that our original intent is to understand how new organizational forms emerge. This addresses a question of social *process*. Moreover, the subsidiary questions, which ask '*who* are the institutional entrepreneurs' and '*how* are the jurisdictional boundaries between professions negotiated', also raise issues of social process. Yin (1984) suggests that questions of social process are best addressed by historical or case study methods. Experiments are inappropriate because the investigator has no control over the process. And the case study is to be preferred over regular historical methods when the event is unfolding contemporaneously with the investigation. This is because the case study researcher has the added benefit of direct observation and systematic interviewing *in situ*-an opportunity rarely available to historians.

*Importance of Context and Holistic Analysis:* Case studies are acknowledged to be the preferred method of social inquiry in understanding *complex* social situations (Guba and Lincoln, 1994; Eisenhardt, 1989). Unlike an experiment, where the intent is to divorce a phenomenon from its context so that it can be manipulated with precision, case studies are designed to investigate social phenomena within a real-life context. The emphasis on verisimilitude and attention to the complexity of social action is based on a view that cases are complicated and actions may be attributed to a wide variety of causal factors and motivations (Stake, 1994). Social action is assumed, thus, to be 'messy' and case studies, which are based on the assumption that there are multiple causes to social situations, are best equipped to accommodate 'messy' situations.

Both the theoretical framework (new organizational forms in changing organizational fields) and the empirical context (the emergence of MDPs in the legal profession) are assumed to be complex social events. The theoretical framework suggests that fields are 'embedded' constructs. That is, they consist of diverse and often conflicted social actors who may opt for a common organizational form, but, potentially, for very different reasons. The unit of analysis, the organizational field, is a similarly complex construct which, in this case, straddles professional communities, includes consumers and clients and extends to market regulators and state officials. Finally, the empirical context straddles geographical, professional and economic jurisdictions. Although the case is singular, it has many component parts that span a variety of domains. Although the boundaries of these domains will have to be specified (in the next section), their scale and scope suggests a degree of complexity that is best addressed by the case study method.

*Flexibility:* Perhaps the most compelling justification for the use of a case study in this dissertation is the shared observation that the term, 'case study', encompasses a wide variety of epistemological domains and includes, within it, a large subset of design strategies and data collection methods which may be modified to meet circumstances as they arise (Stake, 1994; Eisenhardt, 1989; Yin, 1984; Van Maanan, 1988). Case studies, therefore, are not burdened by the same restrictive assumptions and surplus meanings that have become attached, rightly or wrongly, to other methodologies. Case studies are not exclusively qualitative or quantitative (Campbell, 1984). Nor does a commitment to case study necessarily confine an investigation to an exclusively interpretive, constructionist or positivist paradigm. Excellent illustrations of case studies come from each philosophical discipline. The case study approach, therefore, houses a pragmatic approach to social inquiry and offers a range of forms of data collection and interpretation.

Flexibility is an important consideration for any strategy of social inquiry, particularly where the researcher is attempting to understand a process contemporaneously with its occurrence. Events may (indeed, are likely to) unfold in an unpredictable manner, unforeseen consequences may arise and the investigator must have a wide array of data collection techniques available and must be prepared to adapt these to suit the circumstances that arise. Both the breadth of this phenomena and the fact that it includes a mix of historical, archival and documentary evidence, in addition to direct observation of currently occurring events, commends the use of a case study in this research.

**Framing the Case Study in Time and Space**

The primary focus of this dissertation is those events leading up to the introduction of an embryonic form of MDP into the North American legal profession. This event did not, however, occur in a vacuum. Rather, it represents the result of significant changes that have occurred in the past, in other jurisdictions and in other professions. Because organizational fields are nested systems, there must be a degree of flexibility in defining the time and space frame of this study.

*Time:* The time frame of this study will be from 1980 to the present. The initial date of 1980 was chosen for two reasons. First, according to the American Bar Association's *Commission on Multidisciplinary Practice*, 1980 is the date attributed as the 'origin' of the multidisciplinary issue in the United States. A background research paper prepared for the American Bar Association acknowledges this in its title, "A Bit of History-MDP Roots Extend to 1980" (American Bar Association, 1999a). During that year the American Bar Association struck its first committee of inquiry to examine the possibility of permitting lawyers to share fees with other professionals. The *Kutak Commission*, as the Committee came to be known, will be described in detail in Chapter Four.

A second justification for using 1980 as an outside bracket for this study is because 1980 marks the onset of several significant changes that suggested a shift away from the dominance of normative governance and toward market-based governance in the legal profession. Two significant events in Canada illustrate this point. The first event was the removal of restrictions on individual lawyers' right to advertise. Although formalized (in Alberta) in 1982, the debate had its origins in the late 1970s and early 1980s. As discussed previously, permitting lawyers to advertise their services is considered a cornerstone event with respect to increasing competitive activity in the legal profession and in introducing a "market ethos" to the profession.

The second event, though formalized in 1984, also had its origins in 1980. The Supreme Court of Canada struck down the right of provincial law societies to restrict mobility of lawyers across jurisdictions (*Black* v. *Law Society of Alberta*). Prior to this decision, provincial law societies erected strong mobility barriers to lawyers from other provinces. This had the effect of severely restricting the growth of law firms nationally. The Law Society of Alberta was the most aggressive advocate of this position. The Supreme Court decision not only stimulated the growth of large, national firms, but also reinforced the internal competitiveness of the profession and represented another significant erosion of normative governance mechanisms in the profession.

One final justification for the choice of the start of this time frame relates to developments in the accounting profession. Accountants had been studying the possibility of MDPs well ahead of the actions by Ernst & Young. One important report, the ICAA *Ad Hoc Committee Report on Multidisciplinary Practice,* was written in 1981. Choosing 1980 as the outside bracket for the time frame of this study, thus, is based on an intention to include these important preliminary events.

The selection of a terminal date for the study is, necessarily, dictated by pragmatics. In August, 2000 the influential American Bar Association concluded its highly public inquiry into the appropriateness of MDPs for the legal profession. Although its final decision to reject MDPs was not unanimously accepted by all (or even most) state and provincial jurisdictions, its decision and the subsequent "normative diffraction" that immediately followed its decision, provides a useful closing bracket for this case study. Several North American jurisdictions, by August, 2000 had adopted regulations that, for the first time, permitted lawyers to join in partnership with other professions. My intent is to describe and analyze the process by which this event occurred. The process is, however, ongoing and any effort to define an "endpoint" would appear to be somewhat arbitrary. The events surrounding the ABA debate and the creation of multidisciplinary practices in legal services in North America provides something of a 'natural' conclusion to this process.

*Geography:* The original intent was to restrict the case study to events occurring in the legal profession in Canada. Ontario was the site for the first 'captive' law firm in North America and the legal profession in several Canadian jurisdictions (Ontario, Alberta, Quebec and British Columbia) originally appeared to be leading North American professional associations in researching and debating the multidisciplinary issue. These geographical constraints, however, proved to be too restrictive.

Two significant events in the US overshadowed the MDP debate in Canada. First, shortly after the appearance of Donahue and Associates as the first 'captive' law firm in North America, the American Bar Association announced the establishment of a *Commission to study Multidisciplinary Practices* in law. The Commission quickly became the primary forum for debate about multidisciplinary legal practices and several professional associations in Canada, including Alberta and British Columbia, decided to defer any decision about MDPs until the American Bar Association Commission had concluded its hearings.

The second event was the announcement made by the US Securities Exchange Commission of their intent to hold public hearings concerning their proposed new auditor independence rules. The proposed rules, which placed restrictions on the type of non-audit activities that the Big Five accounting firms could undertake, posed a significant potential threat to 'captive' law firms and to other types of multidisciplinary practice. Professional legal associations in Canada also closely watched these hearings, as the outcome would have significant repercussions on the ultimate expression of any new organizational form of legal practice both in Canada and the United States.

Therefore, I decided to expand the geographic scope of this case study to incorporate these two events. My justification for expanding the geographic scope is two-fold. First, the events that occurred in the United States were very important. As indicated previously, the legal profession in North America is 'tightly coupled' with considerable cross monitoring between jurisdictions. Within this context, some institutional agents hold a high degree of normative influence. The American Bar Association is one such agent and most legal professional associations in North America either participated directly or sent observers to the hearings. Other institutional agents within this context, such as the US Securities Exchange Commission hold considerable regulative authority.

A second justification for expanding the geographical scope of the study relates to the high quality of data produced by these hearings. Both inquiries were, for the first time for either actor, open to the public. Transcripts of the written and oral submissions and portions of the debates were made available on publicly accessible websites. Representatives of all the major actors affected by the MDP debate made presentations at the hearings. The result was an unusual opportunity to hear justifications for and against the proposed new organizational form. The material produced by these hearings provided an unusually rich data source. The geographic scope of this study, therefore, covers the introduction of multidisciplinary practices in the legal profession in North America.

Because organizational fields are 'nested' constructs, however, it was important to maintain analytic focus on how the MDP debate was interpreted in Canadian jurisdictions. Ontario was a critical geographical focus because it was the site of the first 'captive' law firm and the second jurisdiction in North America to enact legislation permitting multidisciplinary law firms. Alberta and British Columbia were also significant jurisdictions not only because of pragmatic reasons of access, but also because Calgary and Vancouver were the first regional offices of Donahue and Partners. Accordingly, the substantial archival material provided at the North American level of analysis was supplemented by similar archival material, personal interviews and direct observation at the provincial level of analysis. This format of data collection provided an opportunity to test the validity of my interpretations of the archival data and also reflected the nested structure of the organizational field.

Regulatory jurisdictions in law are also 'nested constructs'. That is, North American jurisdictions are hierarchically stratified wherein some jurisdictions or regulatory bodies occupy a leadership role in adopting new innovations. Other jurisdictions defer to these dominant regulators and will often delay a decision to adopt or reject a particular regulatory practice until the dominant regulator has taken a position. Ontario plays the role of a dominant jurisdiction in Canada, in part because its regulatory body, the Law Society of Upper Canada, oversees the largest body of lawyers in the country and in part because of the historical position of influence Ontario has played in Canadian politics (Arthur and Stager, 1990). British Columbia and Alberta occupy a second tier in this hierarchy. Quebec, because of its unique language and culture and reliance on both common and civil law is recognized as existing somewhat independently from this hierarchy. Canadian jurisdictions, in turn, defer to regulatory decisions taken by the American Bar Association that, although it lacks any coercive regulatory authority, is a powerful normative influence for state and local bar associations in the US as well as for international regulators.[3]

The internal stratification of North American bar associations and law societies produces gaps in the story-line of the emergence of Multidisciplinary Practices as some jurisdictions delay action while awaiting outcomes in another, superior, jurisdiction. This was the case, for example, in Alberta where the Law Society of Alberta formed a committee in 1990 to study the emergence of MDPs but whose activities were restricted to "simply monitoring what was going on in other jurisdictions on this issue...particularly, we were interested in what Ontario would do and also what the reaction would be from the Americans" (Interview, Executive Law Society of Alberta). The data presented in this dissertation follows the unfolding story of MDPs in chronological order, moving from jurisdiction to jurisdiction as significant events occurred. While this produces a continuous storyline on the larger issue of MDPs in North America, it implies 'gaps' in the data that are not really gaps but merely periods in which subordinate jurisdictions engaged in periods of observation and information gathering and waited for the outcomes of events in other, more influential, forums.

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[3] The wide scope of influence of the American Bar Association on other regulatory bodies is reinforced by the number of foreign jurisdictions that made representations to the ABA Commission on Multidisciplinary Practice. They include the Law Society of England and Wales, Law Society of Upper Canada, Canadian Bar Association, International Legal Association (Lex Mundi), Law Institute of Victoria (Australia), French National Bar Council, Union Internationale des Avocets (Brussels), Offre des Avocats a la Coure des Paris, Bar Association of England and Wales, Inter-Pacific Bar Association (Polynesia), Swedish Bar Association, Council of Bars for the European Economic Community, Danish Bar and Law Society, Law Council of Australia, Spanish Law Association.

The ‘nesting’ of organizational fields also occurs in a macro sense. That is, actions and interpretations surrounding the MDP debate in North America were also influenced by events occurring internationally. A significant influence on the MDP debate, for example, were the actions taken by global trade authorities such as the World Trade Organization. Accordingly, where relevant to events in North America, data was collected from select international sources. Details of data collection and analysis follow.

### Data Sources

There are three primary categories of data sources available; archival material, interviews with visible players and direct observation of significant events. Each of these is elaborated in turn.

*Archival Material:* Archival material represents the primary data source for this study. Professionals, and professional associations are notable for their attention to documentation of their activities. There is careful preparation and retention of reports, statistics and extensive minutes of meetings. Because the MDP issue has been the subject of considerable debate in the legal profession, a number of reports, policy statements and related documentary materials were generated. These reports provide a “substantial archival residue” (Gephart, 1993: 1469). Similarly, these archival documents provide a rich source of information about the motivations and interactions between significant actors over time.

There were a number of sources of archival data. Foremost among these was the public inquiry held by the American Bar Association's *Commission on Multidisciplinary Practice*. Between August, 1998 (when the Commission was first established) and September, 2000 (when it was formally dissolved) the Commission conducted public hearings at several US cities, heard from over two hundred witnesses including lawyers, consumers, and representatives of the Big Five accounting firms among others. Nearly all North American professional associations in law were represented at these hearings, including those Canadian jurisdictions that were the subject of this study.

The Commission published transcripts of both the written submissions and oral testimony of these witnesses, generated several reports and published transcripts of the votes regarding MDPs held by their ruling body, the House of Delegates. Collectively, the documents produced by the American Bar Association Commission represent over eight hundred pages of transcribed testimony and documentary evidence. This unusually rich data set is supplemented by a variety of related reports issued by subsidiary bar associations (such as the *New York State Bar Association Report on Multidisciplinary Practice*) and historical documentation (such as the *Kutak Commission of Inquiry into Multidisciplinary Practice* from 1981). The testimony and related documentary evidence provides considerable insight into the publicly espoused motivations and interests of a wide variety of social actors engaged in the debate about multidisciplinary practices in law and provides the best data source for this dissertation. A chart of the witnesses, their affiliation and related documentation produced from this data source is provided in Appendix 3A.

A second significant data source arises from the public hearings held by the US Securities and Exchange Commission regarding their proposed new rules on auditor independence. The proposed new rules threatened to severely curtail the multidisciplinary aspirations of the Big Five accounting firms and played an extremely significant strategic role in the evolution of the proposed new organizational form. Similar to the American Bar Association hearings, the SEC hearings occurred at multiple sites across the US and included transcripts from over eighty witnesses, supporting historical materials and supplementary background reports produced by the Securities Exchange Commission. Again, the material provided by this data source provided a unique glimpse into the publicly espoused motivations and strategies of a broad range of social actors engaged in the multidisciplinary debate. Collectively, the documents produced by this source of archival data comprise approximately five hundred pages of witness testimony, reports and background documents. A chart of the witnesses, their affiliation and related documentation produced from this data source is provided in Appendix 3B.

A third significant source of archival data was provided by the Canadian Bar Association's *International Practice of Law Committee* who, in 1998, were commissioned to study the desirability of MDPs on behalf of the Canadian Bar Association. Although these materials were not made available to the general public, the Committee Chair agreed to provide me with all background briefing materials, transcripts of the debates and all reports and motions produced by the Committee.

The Law Society of Upper Canada provided a fourth significant source of data. Their "Futures Committee" agreed to provide me with all of their background briefing material, progress reports of the working committee and any final reports or documentation they generated. Like the American Bar Association and the US Securities Exchange Commission, the Futures Committee conducted hearings (albeit private hearings), commissioned surveys of their members and created focus groups and panels of inquiry amongst a variety of actors affected by multidisciplinary practice. Together, the documents, background reports and related data produced from the Law Society of Upper Canada and the Canadian Bar Association provided approximately seven hundred pages of documentary evidence. A list of the documentary sources originating from this data source and from the Canadian Bar Association is outlined in Appendix 3C.

A fifth important source of documentary materials came from the Alberta Law Society. Their *Committee on Multidisciplinary Practice* was a critical source of documentary material relating both to the activities of the Law Society of Alberta as well as other jurisdictions. The (then) Chair of the Committee, Pat Rowbotham, permitted me to read through their library of collected materials and provided me with a variety of internal documents relating specifically to actions and events regarding multidisciplinary activities in Alberta. A list of the documents, background reports and related data originating from this source, comprising an approximate four hundred pages of information, is provided in Appendix 3D.

Additional documentary materials were gathered from other sources. The British Columbia Law Society provided me with a collection of documents and reports relating to their inquiries into multidisciplinary activities in that province. This data, however, was not as comprehensive as other sources as it contained significant gaps in chronology. Other documentary materials included published articles in publicly available newspapers and trade journals (such as *Canadian Lawyer, Lawyers News Weekly and L'Expert*). A list of these documents is provided in Appendix 3E.

In addition to the archival documents, statistical data was drawn from a variety of primary and secondary sources. Various professional associations in Canada and the US provided me with longitudinal membership statistics. Income data for Canadian professionals was accumulated through reference to the *Taxation Statistics* publications of Statistics Canada. Income data for US professionals, as well as data on changes in demographic composition of the professions in North America was accumulated from other academic studies.

These data sources are important sources of public and professional perceptions of issues relating to the emergence of MDPs. They represent views from insiders (i.e., professionals) and outsiders (i.e., the public, the media). Together, the archival material represented in Schedules A to E represents nearly two thousand pages of documentation and includes transcripts of testimony and written arguments presented by over two hundred witnesses. The data effectively captures the arguments in favor or opposing the new organizational form by major actors seeking to influence the outcome. The archival data set provides a comprehensive and detailed description of the motivations, actions and rhetorical strategies of actors involved in the struggle to understand multidisciplinary partnerships as a new organizational form in law.

*Interviews:* A series of semi-structured interviews were conducted with significant or "expert" informants (Flick, 1989) involved in or affected by the emergence of MDPs. For pragmatic reasons, these interviews focused on a small but select sampling of actors engaged in the MDP debate in Canada. These actors provided insights into the evolution of the MDP form in Canada and served to validate the interpretations and analyses I was drawing from the archival data, which included both Canadian and US sources. The interviews were also used to elicit an understanding of the context of events relating to the emergence of multidisciplinary practices in which the informant played a direct role. Finally, the interviews served the important function of leading me to new archival or documentary materials or to new informants and to access material or information that, because of its sensitive nature, was not represented in the documentary or archival material. This "snowball" sampling technique was intended to ensure comprehensive coverage of the available data sources (Greenwood, Suddaby and Hinings, 2001). At the end of each interview I assessed whether there were additional informants identified during the course of the interview that should interviewed as a result of information obtained. The decision to stop interviewing is made when the researcher assesses that "saturation" has been achieved and that themes raised in the interviews are recurring (Strauss and Corbin, 1990).

In total, twenty-seven interviews were conducted between January, 1999 and December, 2000. A list of interviewees is provided in Schedule F. The interviews were relatively evenly divided between representatives of the accounting profession and the legal profession. An effort was made to sample evenly from the three conceptual categories of state, market and profession, although, as can be seen from Schedule F, the State is underrepresented with three informants. This weakness is compensated, in part, by the strength of documentary evidence produced from agents in this conceptual category.

Interviews varied somewhat in length but, in general, ranged from forty-five to ninety minutes. All of the interviews were taped. Twenty of the interviews were transcribed. Because of the wide range in backgrounds and professional disciplines of the various informants, there was considerable variation in the detailed discussions with each informant. Given the exploratory nature of the research, however, every effort was made to allow each informant to "tell their story" without the interjection of my preconceived notions of what content ought to be emphasized.

The initial interview protocol, therefore, focused on eliciting general information about the history of the informants' awareness and involvement with the debate about multidisciplinary practices. To begin each interview, the interviewee was provided with an ethics consent form (attached as Schedule G) and advised of the nature of the research. Interviews typically started with a general question about when the informant first became aware of the notion of multidisciplinary practices. The interview would then elicit details about the informant's views on the new organizational form, the implications that such change would have for the informant and the informant's profession.

To understand issues about entrepreneurial activity within the context of multidisciplinary practices, each informant was asked which actor or set of actors was primarily responsible for advocating MDPs. Additional questions were asked that related to the specific actions or strategies that, in the informant's opinion, were undertaken by these entrepreneurs. To understand the process by which jurisdiction boundaries were negotiated between professions, each informant was asked to describe their understanding of the history and current status of relations between accountants and lawyers or, depending upon the particular informant, about relations between his or her profession and other professions.

To gain some understanding about the nature of shifting governance mechanisms in the profession, informants were asked a series of questions about their relationship to their professional association and how that might have changed over the course of their professional careers. Similarly, informants were asked about their impressions regarding the relative importance of 'business' versus 'professional' issues and how this might have changed over the course of their professional careers.

Informants were asked a series of questions designed to assess how the issue of multidisciplinary law firms was 'problematized' by the informant. That is, informants were asked to describe whether a firm composed of lawyers and other professionals was, of itself, problematic. Depending upon the response, informants were prodded to describe how the potential for conflicts of interest, ethical violation and other normative approbations that have been articulated by professional associations in law as potential problems, might be resolved. The purpose of this line of inquiry was threefold. First, it was designed to capture the assumptive position of each informant regarding the overall desirability of MDPs. Secondly, I sought to understand the justifications or rationalizations used by each informant to explain their position, and how they articulated the perceived legitimacy or lack of legitimacy of this new organizational form. Finally, I hoped to determine the underlying logic of each informants worldview regarding the new organizational form and whether these world views emphasized any one or combination of hypothesized field level governance mechanisms.

The interview protocol varied depending upon the type of informant. Clearly, the general questions outlined above would not be entirely appropriate for informants drawn from the government. Accordingly, some adjustments were made to the general focus of the interview in response to the position and background of the informant. Similarly, the protocol of the interview changed somewhat over the course of the research. Over time, for example, it became evident that the legitimation strategies undertaken by actors engaged in the debate were based more on what actors *said* than what they did. Accordingly, over time my questions focused more explicitly on the perceptions by individual informants of what was being said, in the press and in the context of public hearings, by other actors. Similarly, over time I began to focus more explicitly on the language used by each informant to justify his or her position regarding MDPs.

Although the interview protocol was intended, in large part, to capture information relating to the conceptual categories outlined in Chapter Two, the conduct of the interviews was relatively unstructured in that the main effort was to obtain an overall impression of the evolution of the new organizational form and to understand each informant's role in the process and his or her impression or reaction to the process. Most questions, therefore, were open-ended and permitted each informant to provide some personal structure or individual definition about the nature of the issue (that is, how it ought to be characterized) and how it ought to be addressed.

*Direct Observation:* Because, during the course of this research, the regulatory issues regarding MDPs remained unresolved, there were ongoing debates within the Law Society of Alberta, the Law Society of British Columbia and amongst the Canadian Federation of Law Societies about how MDPs might be regulated, what form they ought to adopt and other related issues. These debates reflected similar issues and debates that were occurring (and in some cases are still occurring in various jurisdictions across North America. Such meetings are important sources of data regarding the relationship between the accounting and legal professions and how the boundaries of this relationship are affected by MDPs.

I was able to attend a series of meetings of the Law Society of Alberta and one meeting of the Law Society of British Columbia during which the issue of multidisciplinary practices was debated. Although I was not permitted to tape record the meetings, I was allowed to take notes. In all, I observed five such meetings. Four meetings involved the Law Society of Alberta and occurred in Edmonton, Calgary and Jasper, Alberta. One meeting occurred in Vancouver, British Columbia.

The meetings provided a valuable 'behind the scenes' glimpse into the nature of the argument raised by multidisciplinary practices within the legal profession. Although I was not permitted to speak during the debate, I was able to engage in casual conversation with individual elected members of the law society ("Benchers") during coffee breaks and over meals. The data produced through such observations and discussions provided a unique opportunity to gain an 'unfiltered' view of the strategies employed by these professional associations and also permitted me to validate the impressions and interpretations I was drawing from the archival material.

## Data Analysis

The purpose of this study was to understand the processes by which a new organizational form emerges and is made legitimate. Because of the broad scope of the research question and the overall objective of inducting theory from case study data, the analytical process was inherently iterative, requiring constant movement between data sources, the conceptual framework and the theoretical literature (Miles and Huberman, 1984). The description that follows, therefore, suggests a degree of deliberation in sequence that has resulted from the reconstruction of the process of analysis. Data collection and interpretation overlapped and were, necessarily, punctuated by movements between stages of data collection and analysis.

The first step in data analysis involved the construction of a series of "event chronologies" for significant actors in the MDP debate. The emergence of MDPs and the debate surrounding the suitability of MDPs in law was characterized by a series of events that began in the early 1980's and built in frequency and intensity over time. The identification of actors occurred through ongoing review of the archival and interview data. The chronologies were organized under three primary categories, each corresponding to the three conceptual categories of governance mechanisms identified in Chapter Two (State, Market and Professions). Figure 3.1 illustrates the categories of significant actors.

The event chronologies spanned the time frame of this study, from 1980 to 2001. 'Events' included a wide range of activities that held significant implications for the proposed new organizational form and included such diverse actions as the establishment of commissions of inquiry to the production of position papers on MDPs. The purpose of this exercise was threefold. Foremost, it imposed a degree of order on the overwhelming volume of archival documentary data I had collected. It also provided an opportunity to illustrate, schematically, the pattern of interaction and sequence of actions and responses between actors engaged in the MDP debate. Finally, the material provided an important visual aid in identifying and demarcating divisions or stages in the pattern of events that led up to the emergence of the new organizational form.

**Figure 3.1**

**Categories of Significant Actors for the Event Chronology**

A. Professions:
  1. Law:
    i. Canada
      -Federation of Law Societies of Canada
      -Canadian Bar Association
      -Alberta Law Society
      -Law Society of Upper Canada (Ontario)
      -Law Society of British Columbia
      -Barreau du Quebec
    ii. United States
      -American Bar Association
    iii. Global
      -International Bar Association
  2. Accounting:
    i. Canada
      -Canadian Institute of Chartered Accountants
      -Institute of Chartered Accountants of Alberta
      -Institute of Chartered Accountants of Ontario

B. State
    i. Canada
      -Ontario Securities Commission
      -Government of Ontario-Professions
      -Government of Alberta-Professions and Occupations
      -Inter-provincial Trade Ministers Association
    ii. United States
      -US Securities Exchange Commission

C. Market
    i. Global
      -World Trade Organization
    ii. Organizations
      -Big Five Accounting Firms
      -Donahue Ernst & Young

This construction of data provided the basis of what Abbott (1995: 207) has described as a "sequence data set" or a "set of sequences of events drawn from a particular universe". The events were posted on an Excel spreadsheet for facility of access. A large printed version, occupying a rectangle approximately three feet wide and thirty feet long, became an essential analytical tool for identifying the increasing frequency of activity and the patterns of actions and reactions between participants. This 'hard copy' version of the sequence data set also provided a convenient cataloguing device for the bulk of the archival data. An illustrative excerpt from the data set is provided in Figure 3.2.

This stage required a detailed review of each of the documents that comprised the archival data set. A brief written description of each of the data sources was drafted as I reviewed each document. These reviews allowed me to gain familiarity with the content of each document and assisted in the process of identifying emergent themes (Eisenhardt, 1989). This process also assisted in fleshing out the detail of the 'storylines' provided in the sequence data set.

Concurrent with this process, I conducted and transcribed interviews, reviewed the transcripts and identified key passages and quotations that reinforced the themes developing from the archival data. Testimony from witnesses involved in the public hearings at commissions of inquiry were also treated as interview transcripts and reviewed in a similar manner.

In the next stage I tabulated portions of the data into coded categories (Glaser and Strauss, 1967; Miles and Huberman, 1984). Drawing from Dobbin and Downd (1997), I was interested in understanding how the various social actors who were engaged in the multidisciplinary debate *problematized* MDPs and how they conceived of *solutions* to the problem. The first process is useful in addressing the question of how new organizational forms arise in a highly institutionalized setting. Their ultimate expression depends on the outcome of conflict and negotiation between several groups of powerful actors. In order to understand and display how these various social actors differ with respect to their underlying 'institutional logics' or 'cognitive schema' the data analysis focused on determining how actors characterized and articulated the "MPD problem".

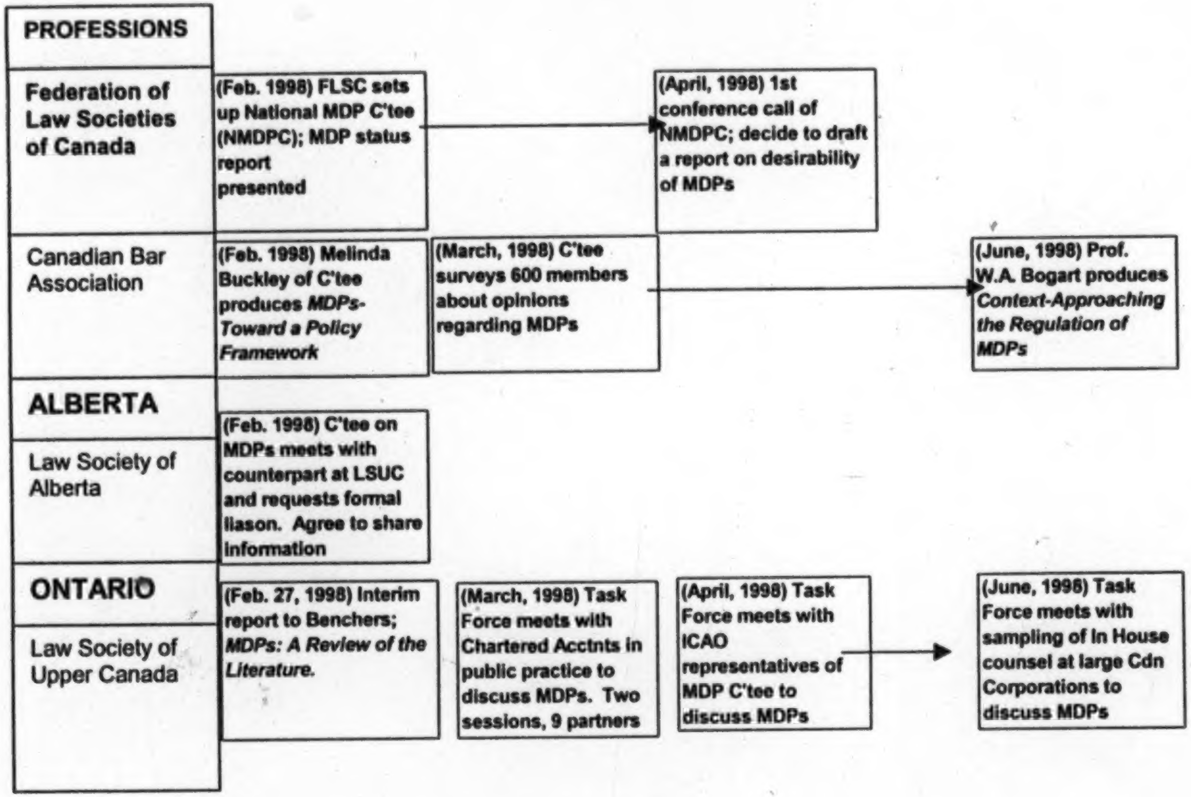
The second process, coding how actors envisioned solutions to the MDP problem, assisted in understanding how various actors viewed the appropriate means of legitimating or de-legitimating the new organizational form. This coding process involved a specific focus on the language used by actors to justify their public position regarding MDPs. This required identification of conceptually distinct categories of types of arguments used to define solutions to the 'MDP problem'. The creation and refinement of such categories was a continuous process which began with my initial review of the documentary evidence and continued through the review of interview data.

The next stage of data analysis involved relating the categories generated by reviewing the data to the conceptual categories generated from the literature. In many cases this required additional reviews of the archival data or, alternatively, a fresh review of some of the theoretical literature. Conversations with key informants helped to further refine the periods imposed on chronological sequences and conceptual categories of legitimation strategies.

### Validity, Reliability and Generalizability of Findings

Although qualitative research methods ought not to follow the precise standards of validity, reliability and generalizability of quantitative research it is important to ensure the veracity of observations and the objectivity of findings (Stewart, 1997). That is, it is important to assess the degree to which the descriptions accurately reflect what was observed, that others are likely to draw the same conclusions as I did given similar opportunities to view the data and the degree to which observations in this context might be applicable to other contexts. Each will be examined in turn.

Figure 3.2
Illustrative Chronology



PROFESSIONS

Federation of Law Societies of Canada

(Feb. 1998) FLSC sets up National MDP C'tee (NMDPC); MDP status report presented

(April, 1998) 1st conference call of NMDPC; decide to draft a report on desirability of MDPs

Canadian Bar Association

(Feb. 1998) Melinda Buckley of C'tee produces *MDPs-Toward a Policy Framework*

(March, 1998) C'tee surveys 600 members about opinions regarding MDPs

(June, 1998) Prof. W.A. Bogart produces *Context-Approaching the Regulation of MDPs*

ALBERTA

Law Society of Alberta

(Feb. 1998) C'tee on MDPs meets with counterpart at LSUC and requests formal liason. Agree to share information

ONTARIO

Law Society of Upper Canada

(Feb. 27, 1998) Interim report to Benchers; *MDPs: A Review of the Literature.*

(March, 1998) Task Force meets with Chartered Acctnts in public practice to discuss MDPs. Two sessions, 9 partners

(April, 1998) Task Force meets with ICAO representatives of MDP C'tee to discuss MDPs

(June, 1998) Task Force meets with sampling of In House counsel at large Cdn Corporations to discuss MDPs

*Validity:* A number of strategies were employed with this research to ensure that the descriptions presented here accurately reflect what was observed. Foremost among these is the use of multiple sources of data (Eisenhardt, 1989; Jick, 1979). Drawing data from a variety of archival sources, from interviews and from direct observation permits a form of 'convergent validity' (Campbell and Fiske, 1959; Leonard-Barton, 1990). Multiple sources of evidence, if they provide similar results or insights, provide substantial reinforcement of the validity of observations. In this research, the richness of the data set, derived from diverse actors offering different perspectives on the same phenomenon, allowed me to look for multiple interpretations of single events.

An important component of the use of multiple sources to ensure validity is the incorporation of secondary statistical information. This data, collected by outside actors and on occasion by other academics, provided external quantifiable support for many of the observations and interpretations I made from the qualitative data set, including the periodization of events. Moreover, the interpretations of some of the secondary source data, provided by other academics, offers a useful check on the interpretations and assumptions I placed on the data (Jick, 1979).

My access to key informants in the field provided the opportunity to discuss my interpretations of events, categorizations of chronologies and thematic constructs with actors engaged in observed process. This interaction provides a degree of 'objective validity' to the research process (Leonard-Barton, 1995). Another component of objectivity relates to the length of time that the researcher is engaged in the field (Pettigrew, 1995). Conducting interviews over an eighteen month period with repeated contact with key informants, permitted some degree of confirmation that the observations I made were sustainable over time. Finally, the ability to engage in direct observation of discussions originating in professional associations regarding the new organizational form provided an important element of "proximity to the event" (Mintzberg, 1979). Such intimacy is an important source of validation because it permits a researcher to independently assess his or her observations and categorizations *in milieu* as the process, itself, is unfolding (Mintzberg, 1979).

*Reliability:* It is also important to identify the steps taken to ensure that the observations are free from bias and that similar observations or conclusions might be made by another researcher. Foremost among these, is a concern that the researcher remain open to new insights or observations that are outside the theoretical constraints imposed by a particular conceptual framework. My openness to new insights is, perhaps, best illustrated by the results shown in Chapter Five which were outside my original theoretical framework. Although I was initially very attentive to identifying overt behaviors and actions undertaken by actors to achieve legitimacy for this new organizational form, I had not anticipated the importance of language and the strategies of rhetoric that came to play a critical role in the legitimation strategies for MDPs.

A number of additional steps were taken to reduce personal bias in this research. To ensure that my assessments of general themes in significant documentary sources of data were reliable I conducted textual analyses of a sample of documents. For example, in order to determine that the drafters of the Trebilcock Report, a document supporting the notion of MDPs, relied extensively on economic or market based justifications and minimized normative or professional issues, I transferred this document to electronic form and counted signifiers associated with each of the three categories of governance used in the document. The result, which demonstrated that the use of 'economic' terms exceeded the use of terms from both remaining categories, combined, served as a useful measure of the reliability of my coding observations. Similar textual analyses were conducted on portions of the American Bar Association public hearings on the MDP issue and the Securities and Exchange Commission public hearings on auditor independence.

Objectivity of my observations was also achieved through respondent validation. Repeated contact with key informants in both the legal and accounting profession provided an opportunity to obtain feedback on my conceptual categories and historical analyses as they were being developed.

Similarly, the opportunity to discuss my research with my supervisor and with other interested scholars provided an important source of feedback that, ultimately, enhanced the objectivity of my observations and conclusions.

Another important factor in ensuring the reliability of this research arises from the transparency of the data and the data analysis (Pettigrew, 1995). One degree of assessing transparency is the use of publicly available documentation and 'secondary' data that includes analyses, by outsiders, of similar data. Such secondary source data formed a significant part of my data set. Because the MDP debate stimulated broad interest in the business press and the media, a wide variety of the data sources identified in Schedule E includes commentaries on significant public events by industry analysts and media commentators. This data provides an opportunity for readers to assess the degree to which my interpretation of significant events corresponded or deviated from those observers.

A final potential problem for reliability arises from the personal background of the researcher. This was a significant concern in this case, given my past training and practice as a lawyer. Although being part of the legal community may have resulted in improved access and a sharper understanding of some of the idiosyncratic issues presented by the emergence of multidisciplinary practices in the legal profession, it may have also made me assumptively blind to other issues. Throughout the research process I made a conscious effort to remind myself of this bias and to ensure balance and objectivity in my analysis. I was assisted, greatly, in this process by my supervisor who was often more sensitive than I to incidents of such bias.

*Generalizablity:* There is an inherent weakness of single event case studies that the results may be idiosyncratic to the phenomenon under investigation (Yin, 1984). As was discussed at the onset of this chapter, this may also be one of the strengths of this type of research. Clearly, instances of large scale institutional change made to accommodate a new form of professional organization is not an everyday occurrence. The research presented here, thus, suffers from the possibility that the observations made here may not be raised to level of 'grand theory'.

In response to this potential weakness, it should be noted that the ultimate test of generalizability will not be evident in this particular research but, rather, will be demonstrated with subsequent research that attempts to test the observations and conclusions produced by this dissertation. Such generalizability will result from comparisons between other, similar case studies or from different programs of research, employing different methodologies and contexts, that assess the soundness of this research.

Although studies of unique events must, often, await future research in order to ensure generalizability, case studies may also be generalizable if the treatment of the data is "sufficiently generic" (Pettigrew, 1995). That is, the problem regarding the generalizability of a single case study may be minimized if the study is analytical and addresses "important patterns or relationships among the variables that can be used to help generate or support theories" (Miller and Friesen, 1982: 1016). To the extent that the conclusions reached here contribute to other, broader, theoretical issues, such as institutional change and the creation of new forms of organizing, this measure of generalizability has been met.

# CHAPTER FOUR

# CHRONOLOGY AND STRUCTURAL ANALYSIS: THE DECLINE OF PROFESSIONAL CONTROLS AND THE EMERGENCE OF MULTIDISCIPLINARY PARTNERSHIPS

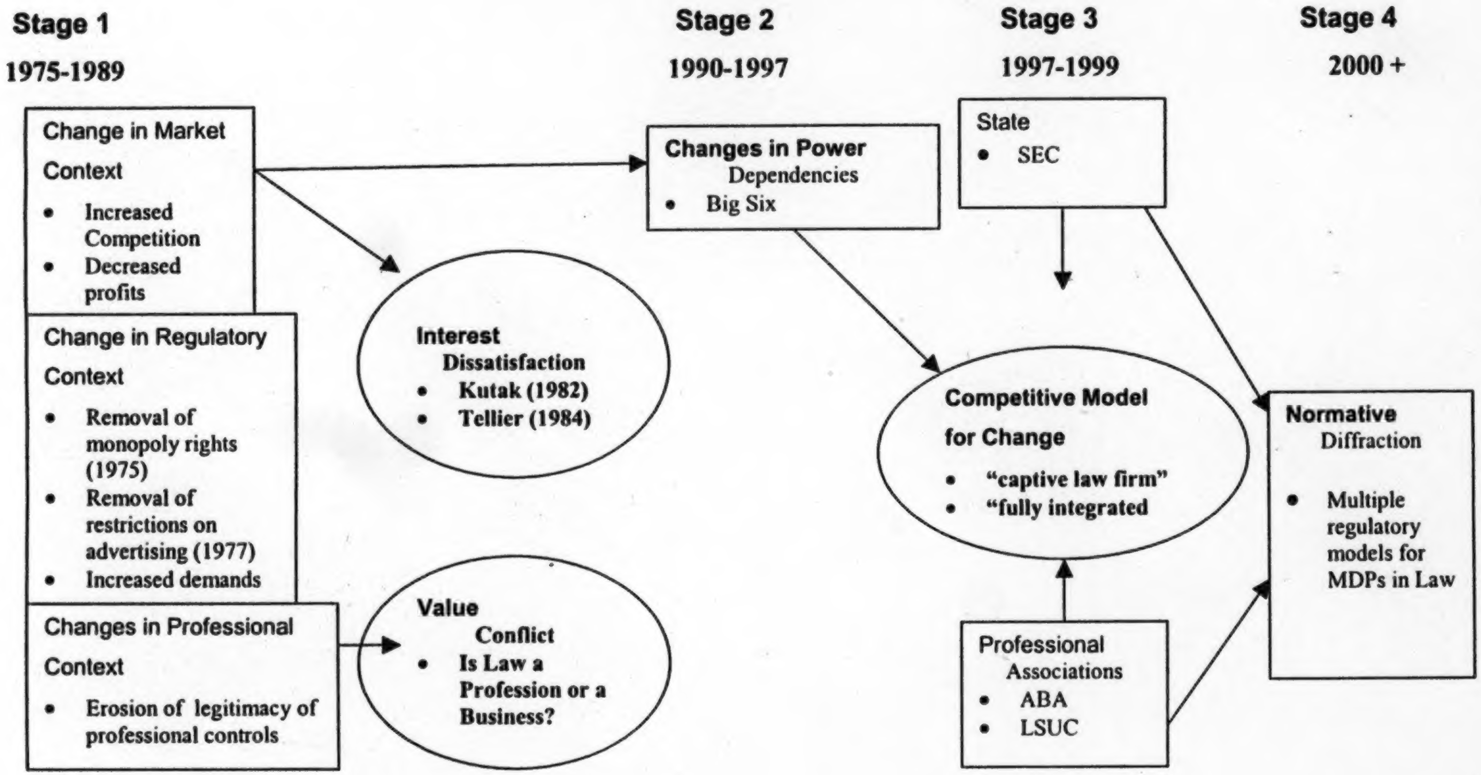
## Introduction

This chapter presents an historically grounded description of the evolution of the concept of multidisciplinary partnerships (MDPs) in North America. This historical account provides a 'natural laboratory' (Dobbin and Dowd, 1997) for understanding the role of shifting governance mechanisms in the emergence of a new organizational form. The primary objective of this chapter is to provide a chronological account of the evolution of MDPs amongst North American lawyers. The analysis focuses on the erosion of professional controls and the corresponding rise in significance of market and state based controls in shaping the MDP construct.

Following Greenwood and Hinings' (1996) model of institutional change, the chronological analysis of this chapter is organized in four primary stages (see Figure 4.1). The first stage, beginning in the 1970s and extending to 1989, describes a series of structural changes in the market, regulatory and professional contexts of law that, collectively, served to undermine the legitimacy and dominance of normative controls. These changes provided the precipitating factors for an institutional rupture that would ultimately undermine the efficiency and legitimacy of established practices in law and make long standing norms, values and beliefs become visible and contestable. Although the concept of multidisciplinary partnerships appeared in professional discourse during this phase, it did not yet gain legitimacy within the legal profession. In spite of pressure from professional associations, however, lawyers continued to experiment with alternate organizational forms for the delivery of legal services, including legal franchises and ancillary business practices.

The second stage, which occurred from 1990 to 1997, was characterized by the rapid growth in size and scope of a neighbouring community of professional organizations: accounting firms. These structural changes in

Figure 4.1
The Institutional History of Multidisciplinary Partnerships


Stage 1
1975-1989
Stage 2
1990-1997
Stage 3
1997-1999
Stage 4
2000 +
Change in Market Context
Increased Competition
Decreased profits
Change in Regulatory Context
Removal of monopoly rights (1975)
Removal of restrictions on advertising (1977)
Increased demands
Changes in Professional Context
Erosion of legitimacy of professional controls
Interest Dissatisfaction
Kutak (1982)
Tellier (1984)
Value Conflict
Is Law a Profession or a Business?
Changes in Power Dependencies
Big Six
State
SEC
Competitive Model for Change
“captive law firm”
“fully integrated
Professional Associations
ABA
LSUC
Normative Diffraction
Multiple regulatory models for MDPs in Law

accounting resulted in an alteration of power dependencies within the newly emerging field of professional business services which, ultimately, allowed large accounting firms to establish a competitive model of multidisciplinary partnership. This competitive model, which made law a subsidiary component of a broad range of other professional services, was put in practice in non-North American jurisdictions. The actions of large accounting firms provided a catalyst for change in the legal profession and presented a radically different ideology of field governance based on open competition and an assumption that legal services were a private rather than a public good.

The third stage began abruptly in 1997 when one of the large accounting firms, Ernst & Young, presented the first concrete illustration of an accounting dominated model of MDP to appear in North America with the unveiling of Donahue & Partners, a law firm that was a subsidiary or 'captive' of a larger professional services firm. This event produced swift reactions from professional associations in law and from state regulators. These reactions sought to delimit the actions of Ernst & Young and to reassert prevailing institutional norms. This stage reflects an effort by traditional agents to reassert the dominance of professional governance mechanisms.

The fourth stage is characterized by a reformative pattern of value commitments. Although professional associations in law and state actors reacted against the accounting dominated model of MDP, the opposition to MDPs could not be maintained. The legal profession exhibited significant 'normative diffraction' (Oliver, 1992) on the issue of MDPs, as different jurisdictions across North America adopted radically different rules and regulations that favoured, partially accepted or rejected the new organizational form.

The four periods represent distinct actions and reactions within the triad of field governance mechanisms presented in Chapter Two. In the first stage, professional governance dominated. Influential professional associations, such as the American Bar Association and the Law Society of Upper Canada, first raised the suggestion of MDPs but eventually rejected it based on its perceived threat to professional values and norms. The rejection of MDPs was uniformly adopted by all legal regulatory jurisdictions in North America. Many lawyers, as well as consumers of legal services, however, were becoming increasingly dissatisfied with the strictures of professional control and challenged the prevailing norms through court action. Other lawyers attempted to circumvent professional controls by establishing ancillary businesses. Collectively, these actions initiated a process of slow erosion of the legitimacy of professional governance.

In the second stage, a group of actors outside the legal profession managed to consolidate sufficient resources to challenge the prevailing institutional structures in law. Large accounting firms expanded in scope and in size and gained the appropriate economic power to create a model of professional service delivery that promoted their interests. These actors justified their intrusion into lawyers' jurisdiction by a market-based ideology of open competition and an expressed objective of enhancing consumer welfare. The threat of dominance by market-based controls accelerated in the third stage but was sharply disrupted by the regulatory intrusion of state agencies and coercive legislation aimed at preventing the expansion of accounting dominated MDPs. In the final stage, professional and state regulators attempted to reassert the dominance of professional controls. Their efforts, however, were too little too late. The field was fractured and a wide variety of experimental models of the new organizational form began to proliferate amongst North American law firms. More significantly, the power of professional associations in law to dictate uniform regulatory standards had dissipated and jurisdictions across North America adopted widely divergent regulatory schemes for MDPs.

The balance of this chapter is organized as follows. First, each of the four chronological stages is described. In each stage, I begin by describing significant events that serve to demarcate the stage. These descriptions, of necessity, are quite general and focus on events at the North American level of analysis. For each section, however, I will also provide a description of changes at the national level in Canada. My primary focus, however, is on events in

Alberta and where appropriate and available, will provide a detailed analysis of how these events were reflected and interpreted within the legal profession in Alberta.

One of the fundamental observations to arise from this research is the importance of values, expressed and implied, in mediating these processes of change. Values serve a variety of functions in the process of change. In early stages of the process of change, values were used as shields to defend prevailing institutional practices and as weapons to attack the MDP model proposed by large accounting firms. In the middle stages of change, values were used as heuristic devices to assist actors to make decisions under conditions of ambiguity. And in the final stages, particularly where adoption of some model of MDP in law seemed imminent, values were used to 'normalize' the changes, to provide the appearance of historical continuity and to ameliorate the effects of the transition. Accordingly, the analysis that follows will pay particular attention to the role of underpinning values in the debate about MDPs. The chapter concludes with a discussion and analysis of the role of values as the change process unfolds.

## Stage One: The End of the "Golden Age" of Professionalism in Law: 1975-1989

The first stage in the evolution of MDPs was characterized by two contradictory themes: the stable and dominating presence of professional controls and the internal appearance of factors that would, ultimately, undermine those controls and set the foundation for the emergence of market controls and the creation of MDPs. Events from each of these themes bracket the beginning and end of the stage. The beginning of the stage was marked by the first significant threat to professional controls, namely, the 1975 US Supreme Court decision that effectively denied the legal profession its monopolistic right to set fees. This was the first in a series of regulatory events that triggered the erosion of professional controls in North American law. A round of accounting mergers in 1989 that formed the (then) "Big Six" marked the end of this period. The Big Six would provide the external stimulus for change in the legal profession by embarking on a wide-ranging expansion of services that, ultimately, would lead to open competition with lawyers for the provision of legal services. Before detailing this chronology, however, it is useful to begin with a description of the field of legal services prior to the erosion of professional controls.

### The Field in 1975

Between the end of the Second World War and the mid 1970s the field of legal services in North America was very stable. This stability is reflected in the slow pace of demographic change in the profession, adherence to a common and enduring organizational form for law firms and a widely accepted schema for self-regulation of lawyers through professional controls. Underpinning this stability was the uniform acceptance of institutionalized values and rationalized myths which made the practice of law distinct from other commercial activities. Each of these will be analysed in turn.

The demographic stability of the field during this period is illustrated by a number of measures that show slow and steady growth in the number of lawyers and homogeneity in demographic characteristics of the profession. From 1950 to 1970 the number of lawyers, in both Canada and the US, grew at a relatively modest and constant rate. In Canada, the average net increase in lawyers from 1950 to 1970 was 35 per cent per decade, slightly less than the rates for physicians and slightly more than for the general population (See Table 4.1A). In the US the net increase in lawyers over the same period averaged about 22 per cent per decade, slightly more than the net increase of physicians and the general population (See Table 4.1B).

The demographic composition of the profession was similarly stable. Between 1940 and 1970, lawyers in private practice, both in Canada and the US, were likely to be male and over forty years of age (See Table 4.2A and 4.2B). Similarly, lawyers shared a common ethnic background. Census Canada

### Table 4.1A
### Decennial Change (%)
### In Number of Canadian Lawyers, Doctors, Accountants and Total Population

| Year | Lawyers | Doctors | Accountants* | Population | GNP |
|---|---|---|---|---|---|
| 1930-39 | 9.5 | 7.0 | 68 | 10.9 | -1.7 |
| 1940-49 | 2.5 | 34 | 62 | 18.6 | 150 |
| 1950-59 | 27.1 | 49 | 133 | 33.6 | 63 |
| 1960-69 | 42.0 | 34 | 95 | 18.3 | 64 |
| 1970-79 | 109.6 | 42 | 68 | 15.0 | 53 |
| 1980-89 | 50.0 | 36 | 60 | 12.9 | 29 |
| 1990-99 | 34 | 31 | 37 | 9.7 | 40 |

Source (Table 1A): Meltz and Stager (1979), Stager and Arthurs (1990) and Census Canada, 1981, "Trends in Occupations. *Accountants were not a distinct occupational category in Canadian census reports until 1970. Accountants' data is, therefore, based on membership statistics from *CICA*.

### Table 4.1B
### Decennial Change (%)
### In Number of US Lawyers, Doctors, Accountants and Total Population

| Year | Lawyers* | Doctors* | Accountants** | Population* |
|---|---|---|---|---|
| 1930-39 | 13.4 | 6.7 | 54 | 7.2 |
| 1940-49 | 1.1 | 14.9 | 95 | 14.4 |
| 1950-59 | 15.8 | 17.0 | 79.5 | 19.0 |
| 1960-69 | 28.6 | 20.5 | 71.4 | 13.3 |
| 1970-79 | 112.0 | 61.0 | 52 | 11.5 |
| 1980-89 | 24.4 | 17.8 | 35 | 10.3 |
| 1990-99 | 22 | 20 | 27 | 9.8 |

Source (Table 1B): *Abel (1997); **American Association of Certified Public Accountants.

indicates that between 1961 and 1981 more than three quarters of Canada's lawyers claimed either French or British heritage (See Table 4.2C). In the United States, the proportion of visible minorities in the legal profession was less than

## Table 4.2A
## Percentage of Lawyers in Canada and US Under 40 years of Age

| Year | Canada | United States |
|---|---|---|
| 1931 | 42% | - |
| 1941 | 36% | - |
| 1951 | 40% | 32% |
| 1961 | 47% | 40% |
| 1971 | 50% | 39% |
| 1981 | 61% | 49% |
| 1991 | 60% | 55% |

Source: Canada-Census Canada decennial reports. US-ABA statistical reports

## Table 4.2B
## Percentage of Female and Male Lawyers in Canada and US

| Year | Canada | | United States | |
|---|---|---|---|---|
| | Male | Female | Male | Female |
| 1931 | 99% | 1% | - | - |
| 1941 | 98 | 2 | - | - |
| 1951 | 98 | 2 | 97.5 | 2.5 |
| 1961 | 97 | 3 | 97.4 | 2.6 |
| 1971 | 95 | 5 | 97.2 | 2.8 |
| 1981 | 85 | 15 | 91.9 | 8.1 |
| 1991 | 80 | 20 | 78 | 22 |

Source, US data: American Bar Association Report on Gender in the Legal Profession. Canadian data: Census Canada Statistical Reports and Canadian Bar Association "Touchstone" Reports on Gender Equity in the Legal Profession.

## Table 4.2C
## Ethic Origin of Canadian Lawyers, percentage distribution

| Ethnic Origin | 1961 | 1971 | 1981 |
|---|---|---|---|
| British | 56.3 | 51.5 | 44.5 |
| French | 23.3 | 22.5 | 23.6 |
| German | 2.4 | 3.0 | 2.8 |
| Italian | 1.0 | 1.4 | 2.8 |
| Jewish | 6.6 | 13.0 | - |
| Ukrainian | 1.6 | 2.1 | 2.2 |
| Asiatic | 0.6 | 1.1 | - |
| Others | 8.2 | 5.4 | 24.9 |
| Total | 100 | 100 | 100 |

Source: Statistics Canada, Census of Canada, decennial publications.

five percent until the mid 1970s and only reached ten percent in 1985 (Abel, 1997; Gilson and Mnookin, 1988).[1]

The industrial organization of legal services was also very stable between 1945 and 1975. The bulk of lawyers in the US and Canada practiced in private law offices (private practice) although there has been a gradual increase in the proportion of lawyers working in government and industry throughout this period (See Table 4.3A and 4.3B). In Canada, from 1931 to 1986, the proportion of lawyers who worked in private practice declined steadily, from about 95 per cent in 1931 to about 82 per cent in 1986 (Stager and Arthurs, 1990, p. 157). In the US the proportion of lawyers in private practice in 1948 was about 90 per cent and in 1988 was about 72 per cent (Abel, 1997, p. 21).

Table 4.3A
Occupational Distribution of Lawyers in Canada (percentage)

| | 1951 | 1961 | 1971 | 1981 | 1991 |
|---|---|---|---|---|---|
| Private Practice | 88% | 87.1 | 83.9 | 83.6 | 82.1 |
| Education | | | 0.5 | 0.4 | 0.3 |
| Government | 6.2 | 6.7 | 8.5 | 10.3 | 10.8 |
| Corporations | 5.3 | 5.6 | 5.2 | 4.5 | 5.8 |
| Other services* | 0.5 | 0.6 | 1.9 | 1.2 | 1.0 |
| Total | 100 | 100 | 100 | 100 | 100 |

Source: Statistics Canada, Occupation by Industry, decennial publications

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[1] The number of African American law students in accredited law schools remained at under 1 per cent of all US law students until 1965. By 1972 the number of African American law students rose to 4.3 per cent and was 6.3 per cent by 1991 (Final Report, New York State Bar Association, 2000). For other racial minorities there is little historical data. Since the 1970's, however, the American Bar Association's Office of Consultant on Legal Education has shown that total minority enrolment in accredited US law schools has grown from 5 per cent in 1972 to about ten per cent in 1999.

Table 4.3B
Occupational Distribution of Lawyers in US (percentage)

| | 1951 | 1961 | 1971 | 1981 | 1991 |
|---|---|---|---|---|---|
| Private Practice | 80.5 | 76.2 | 72.7 | 68.3 | 71.9 |
| Education | 0.6 | 0.7 | 1.1 | 1.2 | 1.0 |
| Government | 9.8 | 10.2 | 11.1 | 10.8 | 9.0 |
| Corporations | 5.7 | 9.2 | 11.3 | 10.9 | 9.8 |
| Other services | 3.4 | 3.7 | 3.8 | 8.8 | 8.3 |
| Total | 100 | 100 | 100 | 100 | 100 |

Source: American Bar Association Journal, various years.

Most law firms in both Canada and the US were small, consisting of solo practitioners or firms of less than five lawyers. Before 1970, for example, about two thirds of Ontario[2] lawyers were sole practitioners and most of the remainder worked in small firms of two to four lawyers (See Table 4.4A). After 1970 the proportion of sole practitioners increased dramatically, as the profession struggled to absorb the flood of new graduates in law, and the number of large firms increased, albeit at a slower rate. Alberta shows a similar pattern of relative stability in the distribution of firms until 1970 (See Table 4.4B). Large firms were rare in both Alberta and Ontario before 1970. In 1971 the largest law firm in Canada was Blake Cassels & Graydon of Toronto with 39 lawyers. The largest Alberta law firm in 1971 was Macleod Dixon of Calgary with 20 lawyers. In the US there was relative stability in the distribution of sole practitioners and small firms throughout the latter half of the century, but significant growth in the proportion of large firms after 1970 (See Table 4.4C).

The relative stability in field structure amongst Canadian law firms before 1975 is further demonstrated by Tables 4.5A, which tracks the five largest law firms in Canada from 1960 to 2000, and Table 4.5B, which tracks the largest firms by province. Note, the firm names in Table 5A do not change for the first

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[2] Because more than half of Canada's lawyers work in Ontario, the province serves as a reasonable proxy for the rest of Canada.

## Table 4.4A
## Lawyers in Ontario: Percentage Distribution by Size of Firm

| Firm Size | 1950 | 1960 | 1970 | 1980 | 1990 | 2000 |
|---|---|---|---|---|---|---|
| Solo | 58 | 58 | 57 | 64 | 63.5 | 74 |
| 2-4 lawyers | 37 | 36 | 35 | 30 | 27 | 19 |
| 5-10 | 4.5 | 5 | 6.3 | 5 | 6.3 | 4.5 |
| 11-20 | .5 | .4 | 1.1 | 1 | 1.7 | 1.3 |
| 21-50 | 0 | .2 | .6 | .4 | .7 | .6 |
| Over 50 | 0 | 0 | .07 | .2 | .05 | .3 |

Source: Canada Law List

## Table 4.4B
## Lawyers In Alberta: Percentage of Entities Distribution by Size of Firm

| Firm Size | 1950 | 1960 | 1970 | 1980 | 1990 | 2000 |
|---|---|---|---|---|---|---|
| Solo | 53 | 51 | 47 | 53 | 54 | 64 |
| 2-4 Lawyers | 41 | 40 | 39 | 34 | 33 | 24 |
| 5-10 | 5.2 | 7.7 | 11 | 9 | 10 | 8.3 |
| 11-20 | .8 | .9 | 1.6 | 3 | 2 | 2 |
| 21-50 | 0 | .3 | .5 | 1.2 | 2.3 | 1.4 |
| Over 50 | 0 | 0 | 0 | .1 | .08 | .6 |

Source: Canada Law List

## Table 4.4C
## Lawyers in US: Percentage Distribution by Size of Firm

| Firm Size | 1970* | 1980** | 1985** | 1988** | 1995** |
|---|---|---|---|---|---|
| Solo | 49.4 | 48 | 47 | 46.2 | 46.9 |
| 2-10 Lawyers | 35.9 | 32 | 28.3 | 25.1 | 22.4 |
| 11-50 | 13.5 | 12.6 | 13.6 | 14.1 | 14.1 |
| Over 51 | 1.2 | 7.3 | 11.2 | 14.6 | 16.6 |

**Sources: *American Bar Association Journal, December 1970, Volume 56 at p. 1165**

**Final Report, New York State Bar Committee on Multidisciplinary Practice, 2000.

three decades of this period, although their relative position may alter slightly. After 1980, the 'major players' are nearly all different (with the single exception of Blake, Cassels & Graydon), a result of new entrants and mergers.

Table 4.5A

Ten Largest Law Firms in Canada (measured by number of lawyers): 1960-2000

1960

| Firm | (Lawyers) |
|---|---|
| 1. Blake Cassels Graydon | (39) |
| 2. Ogilvy Renault | (34) |
| 3. McCarthy & McCarthy | (32) |
| 4. Borden Elliot | (29) |
| 5. Osler, Hoskin Harcourt | (29) |

1970

| Firm | (Lawyers) |
|---|---|
| 1. Blake Cassels Graydon | (67) |
| 2. Ogilvy Renault | (61) |
| 3. McCarthy & McCarthy | (56) |
| 4. Osler, Hoskin Harcourt | (53) |
| 5. Fraser Beatty | (46) |

1980

| Firm | (Lawyers) |
|---|---|
| 1. Blake Cassels Graydon | (169) |
| 2. Osler, Hoskin Harcourt | (154) |
| 3. McCarthy & McCarthy | (150) |
| 4. Fraser Beatty | (127) |
| 5. Ogilvy Renault | (120) |

1990

| Firm | (Lawyers) |
|---|---|
| 1. McCarthy Tetrault | (501) |
| 2. Faskin Martineau | (481) |
| 3. Stikeman Elliott | (249) |
| 4. Gowling Strathy | (247) |
| 5. Blake Cassels Graydon | (243) |

2000

| Firm | (Lawyers) |
|---|---|
| 1. McCarthy Tetrault | (613) |
| 2. Borden Ladner Gervais | (558) |
| 3. Faskin Martineau Dumoulin | (502) |
| 3. Gowling Strathy | (502) |
| 4. Fraser Milner | (384) |
| 5. Blake Cassels & Graydon | (381) |

### Table 4.5B
### Largest Canadian Law Firms, by Province: 1961-1986

| | Number of Lawyers in firm | | | | % increase 1971-1986 |
|---|---|---|---|---|---|
| Province and firm | 1961 | 1971 | 1981 | 1986 | |
| *Newfoundland* | | | | | |
| Stirling Ryan | * | 8 | 13 | 16 | 100% |
| *Prince Edward Island* | | | | | |
| Tweedy Ross | * | 1 | 11 | 12 | 1,100% |
| *Nova Scotia* | | | | | |
| McInnes Cooper & Robson | 10 | 20 | 34 | 41 | 105% |
| Stewart McKeen and Covert | 14 | 25 | 37 | 44 | 76 % |
| *New Brunswick* | | | | | |
| McKelvey, Macauly & Macham | 6 | 12 | 22 | 27 | 125% |
| *Quebec* | | | | | |
| Martineau Walker | 13 | 32 | 76 | 106 | 231% |
| Ogilvy Renault | 34 | 61 | 95 | 120 | 97% |
| *Ontario* | | | | | |
| Blake Cassels Graydon | 39 | 67 | 118 | 169 | 152% |
| Borden Elliot | 29 | 44 | 66 | 110 | 150% |
| Fraser Beatty | 24 | 46 | 94 | 127 | 176% |
| Gowling Hendersen | 22 | 35 | 80 | 114 | 226% |
| McCarthy and McCarthy | 32 | 56 | 111 | 150 | 168% |
| Osler, Hoskin and Harcourt | 29 | 53 | 96 | 154 | 190% |
| *Manitoba* | | | | | |
| Aikens MacCauley & Thorvaldson | 13 | 34 | 42 | 53 | 56% |
| *Saskatchewan* | | | | | |
| McKercher & McKercher | 5 | 11 | 16 | 22 | 100% |
| *Alberta* | | | | | |
| Bennett Jones | * | * | 64 | 101 | |
| Burnett Duckworth Palmer | 3 | 10 | 48 | 73 | 630% |
| MacLeod Dixon | * | 20 | 45 | 86 | 330% |
| *British Columbia* | | | | | |
| Bull Houser & Tupper | 22 | 29 | 52 | 83 | 186% |
| Davis & Company | 20 | 29 | 52 | 83 | 176% |
| Ladner Downs | 16 | 27 | 56 | 73 | 170% |
| Russel DuMoulin | 24 | 35 | 66 | 84 | 140% |

The structural stability of the legal profession is further demonstrated by the lack of geographical mobility of lawyers prior to 1975. In Canada, the restrictive admission requirements imposed by law societies prevented the inter-provincial mobility of lawyers. Canada census statistics show virtually no movement of lawyers between provinces before 1985 (Stager and Arthurs, 1990). Even within provincial jurisdictions Canadian lawyers were unlikely to move. For lawyers over 40 years of age, only 5 per cent reported a move between cities prior to the 1971 census and only 8 per cent reported a move between cities prior to the 1981 census (Statistics Canada, 1971, 1981). [3] After 1985, however, the mobility rate of young Canadian lawyers more than tripled. This was largely due to removal of prohibitions on inter-provincial firms in 1984.

Mobility statistics for US lawyers exhibit a similar pattern of increased movement of lawyers between firms *after* 1984. The American Bar Association's Young Lawyers Division conducted survey studies of inter-firm mobility in 1990 and observed that forty five percent of those lawyers who graduated after 1984 (i.e., who had been working for six years or less) had changed lawyers at least once since graduation. This figure was "only slightly less…than the entire 1984 sample which was a sample of the entire profession with law school graduation dates back to the 1930's (American Bar Association, 1991: 12)." The report bases the increased movement of lawyers after 1984 on changed attitudes within the profession wherein previously dominant norms, such as loyalty to the firm and acceptance of the up-or-out promotional tradition, were no longer accepted.

The internal organizational structure of law firms was remarkably uniform across North America. Prior to 1975, all law firms in Canada were required to organize as partnerships.[4] In the United States, the move to permit professional corporations occurred much earlier. In 1961, the American Bar Association decided that incorporation of professionals did not, of itself, constitute a violation of the profession's ethical requirements (American Bar Association, 1961). By 1975, most US state jurisdictions permitted professional incorporation. The norm, however, in both Canada and the US was for lawyers to organize as partnerships. This included lawyers who formed professional corporations. The typical practice was for the professional corporations to then form partnerships by combining a number of the individual professional corporations (Pritchard, 1982).

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[3] The numbers are slightly higher (25 per cent) for young lawyers (i.e., under 40) but these numbers must be interpreted carefully as the statistics include a large proportion of law students, who may be relocating to attend law school or to their first position.

[4] In 1975 Alberta was the first Canadian jurisdiction to allow lawyers to incorporate. Amendments to the Alberta *Companies Act* permitted lawyers, accountants, physicians and dentists to incorporate. Professional corporations, however, denied lawyers and other professionals the normal limited liability provisions. The general advantage incorporation offered professionals was in tax planning. See Robert Pritchard, 1982, "Incorporation by Lawyers" in Robert G. Evans and M. J. Trebilcock, 1982, *Lawyers and the Consumer Interest*, Toronto: Butterworths.

One of the most significant restrictions on the organizational form of law firms was the requirement that only lawyers hold positions of ownership in law firms. Before 1975, regulations in *all* jurisdictions in both Canada and the US *explicitly* excluded non-lawyers from equity participation in law firms. Most of these regulations are expressed in terms of a prohibition against sharing fees with non-lawyers. In Alberta, for example, the *Professional Conduct Handbook,* Chapter 9, Rule 6 provides: "A lawyer must not split, share or divide a client's fee with any person other than a member of the Law Society in good standing." This prohibition, repeated in codes of conduct throughout North America, formed the principal impediment to lawyers forming partnerships with members of other professions.[5]

Professional regulations also placed strict limits on common business practices, such as advertising. Provincial law societies' rules regarding advertising were drawn from ethical rules in England and were generally similar across Canada and the US. A primary justification for restrictions on advertising was their undesirable economic effects. It was claimed that advertising would increase the overhead costs of the profession and that these costs would be passed along to the consumer in terms of higher fees (Canadian Bar Association, *Code of Professional Conduct*, 1974, Chapter XIII, p. 52). It was also claimed that the need to advertise would raise a competitive barrier to entry that would favour large firms and would prevent sole practitioners and young lawyers, who could not raise the capital required to advertise, from competing effectively (Canadian Bar Association, *Code of Professional Conduct*, 1974, Chapter XIII, p. 52). Finally, it was argued that advertising would encourage competition between lawyers which, ultimately, might lead to ethical violations that would harm the public (*Bates* v. *State Bar of Arizona, 1977* 433 US 350*)*.

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[5] See also Rule 11 of the Canadian Bar Association's Code of Conduct: "Any arrangement whereby lawyers directly or indirectly share, split or divide fees with conveyancers, notaries public, students, clerks or other persons who bring or refer business to the lawyers office is impoper and constitutes professional misconduct."

The consumer protection rationale that pervades this logic was used to justify other restrictions on intra-professional competitive behaviour such as prohibitions against recruiting members of competitive law firms and endorsements of setting standard fees. The justification for such anti-competitive behaviour was based upon an assumption of the inability of unsophisticated consumers to evaluate the quality and nature of legal services (Quinn, 1982) and the need for lawyers to avoid commercial practices that might harm the image of the profession.

The regulatory structure of the legal profession was also highly uniform across North American jurisdictions. The regulatory authority of professional associations (State "bar associations" in the US and Provincial "law societies" in Canada) is granted by legislative enactments at the state or provincial level. In practice, however, governments play a limited role in regulating lawyers and law firms. Governments typically delegate regulatory powers to provincial law societies or state bar associations. The *Legal Profession Act* of Alberta, for example, delegates a variety of powers to the "Benchers" or elected representatives of the law society including the power to set admission requirements to the profession, to restrict non-members from practicing law in Alberta, to discipline or expel current members and to set standards for the conduct and practice of members (*Legal Profession Act*, Chapter L-9.1, Revised Statutes of Alberta, 1995).

The delegation of regulatory authority by the State to the profession is the basis of self-regulation in law. Until recently, most bar associations or law societies would deny that their authority to govern the profession is derived from the State. The Law Society of Upper Canada (Ontario) and the Canadian Bar Association have argued that the power of self-governance is not vested by virtue of government legislation. The historical model of the Inns of Court in England suggests that such power is given to the profession by the judiciary, who have the ultimate authority over who can appear before them (Tuohy, 1982). This is, in fact, the model of regulation in several US jurisdictions such as California where the primary regulatory authority over lawyers rests with the state Supreme Court (Halliday, 1987; Powell, 1988).

The strict controls over commercial activity and organizational form, exerted by professional regulations, provided considerable uniformity in organizational form and practice for lawyers throughout North America. Nearly all lawyers in private practice in North America, for example, organized themselves in partnerships (Galanter and Palay, 1991; Gill, 1988). Similarly, most law firms had a simple internal structure in which, in general, there are only two classes of professionals; associates, who are salaried employees, and partners, who own the firm and share in the profits. Associates aspire to partnership and, in what has been described, alternatively, as the 'Cravath' system or the 'up-or-out' system, those associates who fail to make partner are encouraged to leave the firm (Gilson and Mnookin, 1988; Galanter and Palay, 1991). Billing practices within law firms were also highly isomorphic across jurisdictions. The majority of firms assessed fees by the 'billable hour', or as a fixed rate multiplied by the amount of time spent on a client's work, rather than charging a flat fee or a fee based on a percentage of the project value (Smigel, 1964; Galanter and Palay, 1991; Reed, 1989, 1996). Most important, perhaps, is the observation that lawyers organized their practices in isolation from other professions. That is, only *lawyers* occupy significant positions in law firms.

North American lawyers also shared a common regulatory structure and developed elaborate mechanisms for monitoring changes in practices in other jurisdictions. Changes within this framework moved quite quickly across jurisdictions, both in Canada and the US. This is best illustrated by the movement to remove restrictions against advertising by lawyers (discussed in detail below). The first jurisdiction in North America to remove advertising restrictions occurred in 1977 (*Bates* v. *State Bar of Arizona* 433 US 350). By

1982, law societies in all major jurisdictions in North America had amended their internal regulations to allow a wider scope of advertising by practitioners (Abel, 1997: 223).

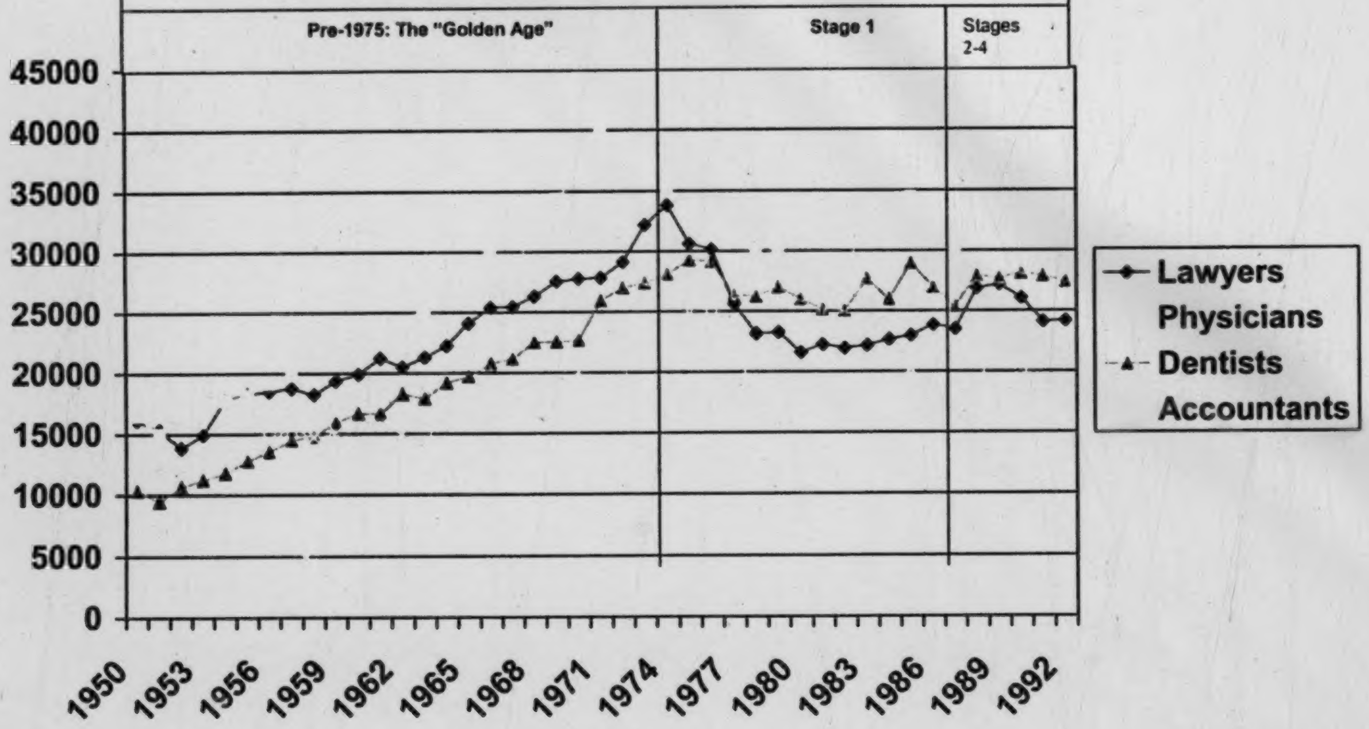
Professional controls over commercial activity and organizational form provided considerable commercial success for lawyers in North America prior to 1975. Lawyers in North America enjoyed a relatively uninterrupted growth in earnings from 1950 to 1975 (See Table 4.6A). Lawyers in Canada

> "experienced a long-run improvement in their incomes – relative to the average for all income earners –from 1950 to 1975. The average income for lawyers in private practice was about three times the national average in 1950; it rose to about four times the national average in 1975" (Stager and Arthurs, 1990: 230).

Lawyers in the United States demonstrate similar earnings growth, with a pattern of growing prosperity from the end of World War II to the mid-1970's (Abel, 1997). Table 4.6B shows the median and mean income of US lawyers from 1929 to 1985 in constant dollars. Lawyer's incomes increased progressively until 1970 when a significant drop in both mean and median income occurred.

The economic success of lawyers over this period served as confirmation of the legitimacy of professional limitations on open market competition and reinforced normative controls over competitive behaviour. The domination of professional controls over open market competition by lawyers has been well documented in the sociological literature (Halliday, 1987; Powell, 1985; Larson, 1977). The success of professional controls on the organization and delivery of legal services helped maintain several "rationalized myths" about the appropriateness of many practices in the law. Larson (1977) describes these myths as based on an ideology of market suppression, wherein the monopoly of professional controls, and the inherent economic advantages created by them, are masked by claims of moral and social propriety. Three such rationalized myths are the necessity of self-governance of the legal profession, the distinction between professionalism and commerce and the notion that legal practice is an essential part of social order. Each of these will be examined in turn.

## Table 4.6A
## Earnings of Select Professionals in Canada: 1950-1992
## In Constant 1971 Dollars



## Table 4.6B
## Median and Mean US Lawyer Incomes: 1929-1979
## In Constant (1985) Dollars

| Year | Lawyer Incomes<br>Median | Lawyer Incomes<br>Mean | US Median Family Income |
|---|---|---|---|
| 1929 | - | $32,174 | $11,046 |
| 1935 | - | 30,956 | 9,240 |
| 1941 | $21,856 | 32,693 | 11,502 |
| 1947 | 25,415 | 33,596 | 13,520 |
| 1954 | 29,036 | 37,846 | 15,468 |
| 1959 | 37,300 | 47,500 | 18,470 |
| 1969 | 47,638 | 59,967 | 25,635 |
| 1979 | 36,716 | 47,450 | 27,286 |

*Source: Sander and Williams (1989)*

## Table 4.6C
## Ratios of Lawyers Incomes: 1929 to 1979

| Year | Lawyer Median to US Median | Lawyer Mean to US Mean | Lawyer Median to Lawyer Mean |
|---|---|---|---|
| 1929 | - | 2.91 | - |
| 1935 | - | 3.29 | - |
| 1941 | 1.96 | 2.84 | .67 |
| 1947 | 1.86 | 2.48 | .76 |
| 1954 | 1.88 | 2.51 | .77 |
| 1959 | 2.02 | 2.57 | .79 |
| 1969 | 1.85 | 2.22 | .83 |
| 1979 | 1.35 | 1.74 | .77 |

*Source: Sander and Williams (1989)*

Self-governance in law refers to the ability to "set educational standards, regulate admission to practice, proscribe ethical codes and discipline deviant practitioners" (Powell, 1985: 281). This high degree of control, which existed first in England in 1292 and has since been transplanted and maintained in all commonwealth jurisdictions and the US (Hurlburt, 2000), permitted lawyers, through elected regulators, to set their own standards of practice, establish common fee schedules and restrict both intra and inter professional competition. Ethical constraints, the primary mechanism for professional regulation through normative controls, reflected the strong degree of control over market forces by discouraging intra-professional competition through rules that prohibited advertising, touting and related commercial practices (Friedson, 1983). To outsiders, the legal profession was viewed as a monopoly, free from traditional competitive controls from the state, consumers or external competition (Rhode, 1981).

The mythical nature of the concept of self-regulation is illustrated in the reverential, moral and often sentimental tones used by senior representatives of the profession as they decry contemporary threats to professional autonomy. William H. Hurlburt, a senior representative of the Alberta bar and author of a current Canadian text on self-regulation of the legal profession in Canada, England and Wales, describes self-governance as "an institution of great antiquity" (Hurlburt Interview, 2000). Hurlburt elaborates the "special duty" granted lawyers by the capacity of self-governance:

> "Professionals individually and collectively have thus undertaken a special duty. It is a duty which is *profoundly moral* and ethical as well as it is legal. It is based on the trust invited by each individual professional. It is also based on a form of social contract between the professions as a whole and society. It precludes a professional from using the lawyer-client relationship…for the professional's own benefit." (Hurlburt Interview, 2000, emphasis added).

The rationalized myth of self-governance is maintained by establishing an, often tenuous historical imperative to justify self-regulation. Consider, for example, the following excerpt from the Alberta Law Society's submission to the

Government of Alberta's Council on Professions and Occupations (Bishop, 1990: 8-9):

> "Historically the profession developed as a self-governing entity before there was any legislation and although there has been a legislative framework in Alberta since 1905, it reflects that which had traditionally existed."

The account is flawed, both legally and historically. The ability of Albertan lawyers to self-regulate is entirely the result of government legislation and cannot be traced beyond the first legislative pronouncement regarding lawyers in the province, in 1907 (Pue, 1995). Before then, most of the functions of the law society were enforced either by state regulations or by the Court system (Hurlburt, 2000). Placing self-regulation of the profession within a long-term historical framework, however, provides a form of legitimacy. By making self-regulation a practice "of great antiquity", professional associations create a sense of logical continuity for the practice which has worked well in the past and ought not to be interfered with.

A second rationalized myth central to the legal profession in North America until the mid-1970s was the notion that the practice of law was not a *commercial* undertaking. That is, that the professional aspects of delivering legal services was distinct, and superior to, the *business* of practicing law. Larson (1977: 220) argues that the ideology underpinning this myth is based on three "anti-market" principles:

> "The first is a work ethic derived from ideals of craftsmanship, which finds *intrinsic* value in work and is expressed in the notion of a vocation or *calling*...The second is the ideal of universal service; connected with the 'protection of the social fabric' against the subversive effects of the market...Third, its ideological status model appears as a secularized version of the feudal notion of the *noblesse oblige*, which embodied the nobility's ideological aversion to commercial pursuits and its belief, anchored in a religious view of the social world, that high rank imposes duties as well as conferring rights."

The strength and history of this myth is reflected in an anecdote from a prominent New York law firm, Cravath Swain & Moore, which illustrates the strength and history of professional controls to subordinate "crass commercial instincts" in the socialization of young lawyers:

> "Before 1900 'clerks' [young lawyers] were paid nothing: Learning the law was a process of apprenticeship, and the apprentices were to be grateful for the opportunity. After World War 1, clerks in all the larger [New York] offices were upgraded to the status of 'associates' and were salaried but the salaries were modest. When Cravath began to pay more in 1924, the other law firms called for a meeting and an agreement was reached to prevent any firm from offering more to new law school graduates than any other firm" (Linowitz, 1994: 24).

Part of the myth of raising the professionalism of law above business interests was acceptance of the assumption that professional values were both distinct from, and superior, to the business aspects of practicing law. As one long standing Alberta practitioner put it:

> "When we graduated [in 1954] we all wanted to make money but we had it instilled in us that this is a profession and somehow, we didn't know what it meant, you know, I am being facetious, but you know there was this professionalism…at all costs one must be professional, you know, even if it meant starving to death and none of us liked that idea too much. But the whole concept of professionalism has undergone a radical change, I think, with the openness now…everything must be open, your ability to advertise, marketing concepts, the whole thing. It used to be an old boy's club and we all know it functioned behind closed doors and you can no longer do that" (Interview, Partner Edmonton Law Firm, 2000).

The rationalized myth that a profession is not a business is aptly reflected in those ethical rules that suppress market competition, including restrictions on lawyer mobility and the ability of lawyers to advertise their services. Consider, for example, the economic justification given to Canadian lawyers by the Canadian Bar Association, for restrictions on the right to advertise:

> "Unregulated advertising is not in the interest of the public or the profession. Such advertising has for good reason been prohibited by all professions. It would be apt to encourage self aggrandizement at the expense of truth and could mislead the uninformed and arouse unattainable hopes and expectations resulting in the distrust of legal institutions and lawyers. Moreover, there are sound economic reasons for not allowing unregulated advertising, quite apart from the traditional reasons for which the professions have rejected it. There is the risk that such advertising would tend to increase the cost of legal services and in the course of time tend to bring about a concentration of legal services in large firms that could afford to advertise

> freely to the detriment of the medium size and small firm, thereby unduly limiting the choice of persons seeking independent legal representation" (CBA, *Code of Professional Conduct*, 1974, Chapter XIII, p. 52).

The ultimate strategy of this rationalized myth is an effort to deny open economic self-interest in favour of the public interest. The professional discourse surrounding the myth constructed a vision of legal practice as existing in a realm between the public and private, where the provision of legal services was viewed as a *public* rather than a private commodity and the overt subordination of commercial self-interest was used to justify powerful professional controls over economic activity.

A final rationalized myth used to support the dominance of professional controls relates to claims of the unique and important role that lawyers play in contemporary society. Vague references to "constitutional order", "political freedom" and the tyranny of the state are reflected in these arguments. The importance of professional governance in law is justified in the Alberta Law Society's submission to the Government of Alberta's *Council on Professions and Occupations* on the basis of political freedom:

> "It may be trite to say that a free and independent legal system is a fundamental right in a free and democratic state. The dual components of any legal system are an independent judiciary and an independent bar. Without both, a legal system is not free, but is merely an agency designed to the will of the state" (Bishop, 1990, p. 22).

Similar claims of uniqueness are made by a Law Society of Upper Canada submission to the Ontario *Professional Organizations Committee* in 1978:

> "The legal profession has a unique place in the community. The distinguishing feature is that alone among the professions it is concerned with protecting the personal and property rights of citizens from whatever quarter they may threatened and pre-eminently against the threat of encroachment by the state. The protection of rights has been an historic function of the law and it is the responsibility of lawyers to carry out that function" (Law Society of Upper Canada, 1978: 3).

Other justifications for the dominance of professional controls in law refer, alternately, to principles of a "free and democratic society" (Law Society of

Newfoundland, 1993: 3) and the "freedom of individual citizens" (Law Society of Upper Canada, 1978: 26).

The importance of these rationalized myths cannot be underestimated. They form the basis of an institutionalized logic of professionalism. This logic is based upon claims of the superiority or uniqueness of the legal profession. It draws upon taken-for-granted assumptions about the primacy of history and historical continuity over reasoned and open policy analysis. And, finally, it is based upon an assumptive, but unexamined, denial of economic self-interest in favour of a vague or poorly defined rhetoric of public interest. These taken-for-granted assumptions become embedded in professional values which, as the foregoing analysis will show, form the primary basis for conflict and change in the growing debate about multidisciplinary firms.

## Increased Competition and the Erosion of Professional Governance

A series of contextual changes in the latter 1970s and early 1980s began to undermine professional governance in the legal profession. Three general categories of changes can be identified: changes in market context, changes in the social/demographic context and changes in the regulatory context.

*Changes in market context:* Changes in the market context were preceded by a rapid increase in the number of lawyers, both in Canada and the US, between 1970 and 1990. Tables 4.1A and B illustrate the rapid increase in the number of lawyers that began in the 1970s. In Canada the increase was more than seven times the rate of increase in the national population. In the US, the number of lawyers grew at nearly ten times the rate of the general population. This growth in the legal population cannot be accounted for by a general economic expansion. The GNP growth rates in both US and Canada was significantly slower during the 1970s than the previous two decades and both Canada and the US experienced severe recessions in 1970 and 1974.

These trends suggest that the growth in the number of lawyers dramatically outpaced the growth in the market for legal services over this period. This is supported by evidence from Taxation Canada that shows a steep decrease in average income reported by Canadian lawyers beginning in 1972 (Table 4.6A). Canadian lawyers in private practice experienced a drop in average real earnings of 17 percent, in the 1970s. More significant, perhaps, is the parallel decrease in the income of lawyers relative to other professionals in the rest of Canada. Although all professions experienced a relative decline in earnings, the decline was most significant for physicians and lawyers.

In the US, partner incomes in law firms grew from 1929 until 1969 but declined, in real terms, by at least ten per cent between 1970 and 1980 (Table 4.6B). The median income of lawyers fell 23 per cent, in real terms, from 1969 to 1979, during a time when the median income of American families rose about 7 per cent.

More interesting, perhaps, is the observation that the trend, prior to the mid 1970s, among US lawyers was toward greater equality in income. After 1970, the trend reversed and incomes between lawyers become less evenly distributed. Table 4.6C, taken from Sander and Williams (1989) shows the computed ratio of median lawyer income to mean lawyer income. Because income distributions, such as those shown in Table 4.6B are skewed, a comparison of the mean to median income provides an estimate of income inequality within a population. The lower the ratio, the more unequal the distribution of incomes. Between 1941 and 1969 incomes amongst lawyers were becoming more evenly distributed. After that time, the trend is reversed. This increasing inequality in the distribution of rewards amongst lawyers, as will be discussed in later sections, contributed significantly to the dissatisfaction of some segments of the population and generated challenges to the system of professional controls.

It is important to note which segment of the lawyer population was most directly affected by the reduction in income. Ultimately, all levels of practice would experience a reduction in real income. Sole practitioners and lawyers in small firms, however, were the first to experience the reduction of income and were affected more significantly than large firm practitioners. Table 4.6E demonstrates the averaged real incomes of sole practitioners and partners, in constant (1985) dollars, from 1960 to 1986. Sole practitioners experienced a sharper and longer reduction in real income (dropping 46 per cent between its highest point in 1972 and lowest in 1982) than did partners in firms (dropping 18 per cent from a high in 1973 and a low in 1981). Thus sole practitioners experienced a more severe and lengthier reduction in income starting in the early 1970s.

A somewhat more fine-grained analysis is offered by the data in Table 4.6E, which shows the starting salaries of beginning lawyers in elite, large and small firms as well as in corporations. Unfortunately, data on partner earnings by size of firm is not available, but beginning salaries of young lawyers serves as a useful proxy. The data suggests that large firms and elite firms were somewhat insulated from the economic shock of the 1970's.[6] Although the data is incomplete, it suggests that starting salaries dropped only slightly and eventually continued to rise. For associates in smaller firms, however, salaries decreased more sharply and over a longer time period.

By the early 1980s the decline in relative prosperity had filtered up to even the largest firms and became the subject of public debate, both in Canada and the US. The *New York Times* business section ran a feature article in January, 1983 on the impact of the recession, high costs and stiff competition on the top (i.e., large) US law firms. The article ("A Gentlemanly Profession enters a Tough New Era") said that large firms were "hustling for clients" and that the practice of

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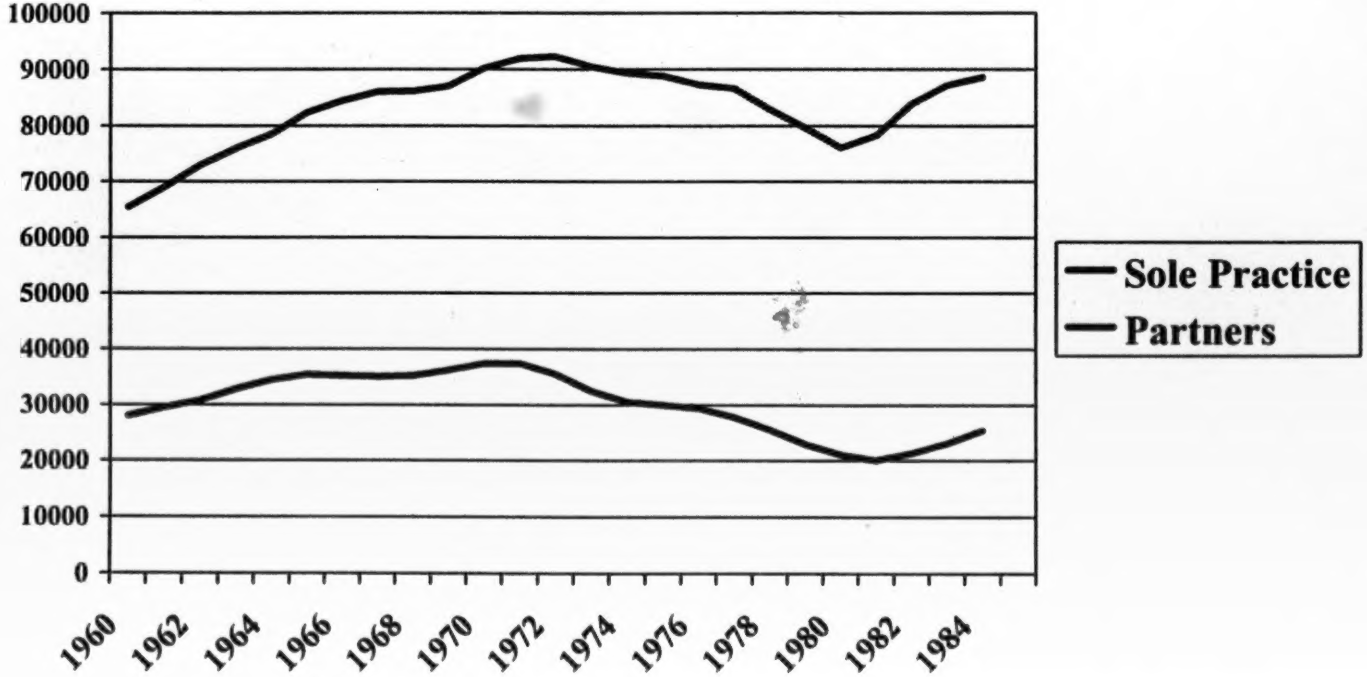
[6] Elite firms, in this context, were those New York firms identified by Galanter and Palay (1988). Large firms were those firms in the Altman and Weil survey of income with more than 40 lawyers before 1982 and more than 75 lawyers thereafter.

Table 4.6D
Incomes of US Sole Practitioners and Partners: 1960 to 1984



Source: Sander and Williams (1980)

## Table 4.6E
## Starting Salaries of Young Lawyers: 1963-86
## In constant (1985) dollars

| Year | Elite Firms | Large Firms | Small Firms | Corporate Counsel |
|---|---|---|---|---|
| 1963 | 24,750 | | | |
| 1966 | | | | 25,418 |
| 1967 | 32,220 | | | |
| 1968 | 46,382 | | | 28,874 |
| 1969 | | | | 32,337 |
| 1972 | | | | 34,708 |
| 1973 | | 33,890 | 26,628 | 32,626 |
| 1974 | | 33,812 | 25,523 | 31,026 |
| 1975 | 44,000 | | | 28,428 |
| 1976 | 43,470 | | | 29,126 |
| 1977 | 50,120 | 31,954 | 23,078 | 28,462 |
| 1978 | 51,975 | 32,979 | 23,085 | 29,174 |
| 1979 | 48,840 | | | 28,047 |
| 1980 | 49,780 | | | 27,299 |
| 1981 | 52,510 | 33,119 | 20,108 | 26,586 |
| 1982 | 49,950 | 33,432 | | 28,041 |
| 1983 | 52,920 | 35,632 | 21,163 | 30,360 |
| 1984 | 52,000 | 36,249 | 24,856 | 29,947 |
| 1985 | 54,000 | 35,000 | 22,000 | 29,004 |
| 1986 | 63,733 | 37,283 | 23,056 | 30,428 |

**Source: Sander and Williams, 1989, p. 466. Column 1: 1963-69 - Galanter and Palay, 1988; 1975-83 – Annual Salary Review, *Student Law*, November issues; 1984-86: news accounts.**
**Columns 2, 3 and 4, Altman and Weil Inc. *The Survey of Law Firm Economics*, various editions.**

law had "become much like a business in any other field":

> "For these firms, a new era has dawned, one in which the practice of law has ceased to be a gentlemanly profession and instead has become an extremely competitive business" (*New York Times*, January 1983, p. 1).

A similar article the previous year (*Fortune*, April, 1982) observed that elite law firms were, for the first time in decades, beginning to focus on fees, expenses and profits. Law firms, the reporter observed, were even hiring public relations firms to handle new contracts, were revamping formulas for profit distribution to give more weight to rewarding new business generation and, in some cases were engaging in the "unseemly practice" of raiding other law firms for their partners in hopes that their competitors' clients will follow.

In Canada one informant recalls his astonishment when, after articling with one of the largest Edmonton law firms in 1985, he discovered that he would be expected to solicit clients with "cold calls":

> "I was shocked. Here I was at one of the so-called 'elite' firms in town and I was expected to cold call new customers. My first reaction was, "how secure is my job here". My second reaction was, "do I really want to become a partner". I started looking around the next day... "(Interview, Partner Edmonton Law Firm, 2000).

The decline of lawyer incomes was exacerbated in Alberta by the introduction of the National Energy Program in 1982 which caused several large-scale resource projects to be abandoned and marked the onset of a severe economic downturn in western Canada. The woes of Alberta lawyers were noted in the press (*Canadian Lawyer*, January, 1983) and the early 1980s proved a turning point in the economic fortunes of their firms:

> "In 1983 the economy went in the tank. A large part of our clientele is based in the oil-patch and the National Energy Program gutted that market overnight. It was the beginning of tough times around here" (Interview, Partner, Calgary Law Firm, 2000).

The debate about the declining economic fortunes of lawyers was taken up in professional associations and, increasingly, focused on the question of whether limits ought to be placed on the number of lawyers. The Law Society of Upper Canada and the Ontario Branch of the Canadian Bar Association appointed committees in 1981 to consider the issue of whether the profession was overpopulated. A conference was held at the University of Western Ontario on the issue. In British Columbia seminars arranged by the Law Society of British Columbia in 1984 informally addressed the possible glut of lawyers (Warner interview, 2000). A standing committee in Quebec examined the issue of lawyer overpopulation in that province (Barreau du Quebec, 1984).[7]

*Changes in the professional context:* The rapid increase in numbers of lawyers was accompanied by a significant change in the demographic composition of the profession. Before 1970, most lawyers were male, Caucasian, Protestant and over 40 years of age. After 1970 more than half the lawyers in Canada were under 40 years of age (See Table 2A). In the US, the median age changed from 46 in 1960 to under 40 by 1980 (Altman and Weil, 2000). The number of female lawyers in North America increased significantly between 1970 and 1990 (Table 3B). And, after 1970, the ethnic and religious background of lawyers in both Canada (Table 3C) and the US changed dramatically.

The demographic changes in the profession have been identified as an underlying component to challenges in the prevailing system of professional governance. The Law Society of Alberta's *Report of the Futures Committee*, for example, acknowledged that the increasing youth and ethnic diversity of lawyers tends to place in question "the degree to which members of minority communities embrace the traditions and values of the dominant cultures, or oppose them and seek to introduce alternatives" (Law Society of Alberta, 1992, p. 6). A similar study by the American Bar Association observed that as the demographic mix of "legal organizations change, so will their cultures and values" (American Bar Association, 1986b, p. 10). The report identified demographic shifts in the profession as contributing to the shift from "fraternal" values, such as lock-step compensation systems, to "business" values, such as increased performance accountability and merit based compensation.

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[7] It is important to note that the debate about lawyer population is not new, either in Canada or the US. Similar debates were raised in the Law Society of Upper Canada as early as 1870 (Gidney and Millar, 1994) and in the US in over several decades (Sander and Williams, 1989). It is important to note, however,

*Changes in the Regulatory Context:* The first and most significant challenges to the prevailing professional regulatory structures in law in North America originated with two sets of actors; consumer groups and disenfranchised practitioners; minority lawyers, young lawyers and lawyers in small firms. A series of court challenges initiated the process of erosion of those professional controls that once provided lawyers with market closure for their services.

The first challenge was the removal of lawyers' ability to set fee schedules within a local marketplace. This first occurred in the US in a decision of the US Supreme Court in 1975 (*Goldfarb v. Virginia State Bar* 421 US 773*)* that held that minimum fee schedules amongst lawyers were in restraint of trade. The lawsuit was undertaken as a class action by a consumer group of "prospective homeowners" who sued the county and state bar associations in Virginia, alleging that minimum fee schedules constituted price-fixing and violated the *Sherman Act*. Previous efforts to apply anti-trust law to the legal profession had been rejected on an exception, in the *Sherman Act*, for the "learned professions". Professionals could not be subject to anti-trust rules, it was argued, because their public service obligations distinguished them from trades and commercial businesses (McCoy, 1977). The goal of professional activities was not, primarily, to earn profit, but "to provide services necessary for the community" (McCoy, 1977: 1048).

The US Supreme Court rejected this argument in *Goldfarb*, arguing that, in this case, the impact upon the consumer overrode the need to protect the legal profession from 'crass commercialism'. The Court noted that, because the legal profession held a complete monopoly in the area of title examination and real estate transactions, the price fixing activities in this case were unusually damaging to the consumer. The Court attempted to minimize the scope and impact of the decision by observing that "it is no disparagement of the practice of

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that the rate of increase of lawyers in North America during the 1970s was the single largest increase in lawyer population in history.

law as a profession to acknowledge that it has this business aspect..." (421 US 733 at p. 787).

This was a marked departure from previous judicial decisions that held lawyers exempt from antitrust law (Barber, 1978). The impact of the decision was profound and offered a new awareness that the practice of law was, indeed, a business (McCoy, 1977).

In Canada, the issue of whether law societies were subject to anti-trust law came before the courts in two separate cases, each heard in 1988; *Regina v. Waterloo Law Society* and *Regina v. Kent County Law Society.* In both cases local law associations had distributed to their members a schedule of 'suggested' fees, as was the common practice. Complaints raised by consumers formed the basis of charges brought against the associations by the Crown. The Ontario Supreme Court, citing both *Goldfarb* and the harmful effects of the tariff on consumers, criticized the use of tariffs and further ordered them to refrain from setting any committee to regulate fees.

Collectively, these decisions formed an important step in blurring the carefully constructed distinction between law as a profession rather than a business. The rationalized mythology that competition within the profession was, somehow, unseemly began to be questioned by legal practitioners and academics.[8]

The second important challenge was a US Supreme Court decision from 1977 in which professional restrictions on the right to advertise were removed (*Bates v. State Bar of Arizona* 433 US 350). Although the decision acknowledged the right of professional associations to develop parameters within which the solicitation of clients could take place, the US Supreme Court used constitutional protections of free speech to allow lawyers to advertise their services to the public. Professional legal associations in Canada voluntarily amended their restrictions on advertising in anticipation of similar challenges before the enactment of the Constitution Act of 1982. This was so even though a

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[8] In Canada see, for example, Dunlop, B. 1983. Is competition unbecoming? 8 Canadian Business Law Journal, 235-244.

Supreme Court of Canada decision (*Jabour v. Law Society of British Columbia, 1982)* upheld the right of a law society to regulate professional conduct including advertising.

Both in Canada and the US the challenges to advertising restrictions originated in appeals from young lawyers who felt that the restrictions gave an unfair competitive advantage to established lawyers and law firms. The challengers to the Bar of Arizona's advertising restrictions, for example, were young lawyers each within five years of graduation from law school. The judgement describes their efforts to use advertising as part of a low cost, high volume, commodity-work strategy for providing legal services:

> "After admission to the bar in 1972, appellants worked as attorneys with the Maricopa County Legal Aid Society. In March, 1974 the appellants opened a law office, which they call a "legal clinic" in Phoenix. Their aim was to provide legal services at modest fees to persons of moderate income who did not qualify for governmental legal aid. In order to achieve this end, they would accept only routine matters, such as uncontested divorces, uncontested adoptions, simple personal bankruptcies and changes of name, for which costs could be kept down by extensive use of paralegals, automatic typewriting equipment, and standardized forms and office procedures. More complicated cases, such as contested divorces, would not be accepted. Because appellants set their prices so as to have a relatively low return on each case they handled they depended on substantial volume" (*Bates v State Bar of Arizona*, 1977: 351.

The Canadian challenger to the British Columbia advertising restrictions, in 1982, was also a young lawyer of East Indian descent who intended to pursue a similar low cost and high volume strategy (*Jabour v. Law Society of British Columbia, 1982)*.

A third challenge, which was somewhat unique to Canada, resulted in the removal of professional regulations that prevented the movement of lawyers between provinces. In contrast to the previous case, this challenge to professional controls came from a large, established actor. In February 1981, the Toronto based firm of McCarthy & McCarthy, then the largest law firm in Canada, submitted a proposal to the Law Society of Alberta disclosing its intention to open an office in Calgary, Alberta as part of its broader objective of becoming a national law firm with offices across the country. The proposal included a plan to merge with an existing Alberta firm, Black and Company. Under the original proposal, the Calgary office was to be a branch of McCarthy and McCarthy and would operate under the Toronto firm's name. Lawyers in the Alberta branch office would practise law in Alberta although some would reside in Alberta and some in Ontario. It was made clear than only those partners who were qualified to practices in Alberta would be held out as being part of the Calgary firm.

The matter was referred to the Ethics Committee of the Law Society and was discussed by the Benchers of the Law Society at several meetings. While the original proposal was under discussion, the proposal was amended. One of the major concerns of the Law Society was the use of the firm name "McCarthy & McCarthy", in Alberta. The amended proposal, thus provided for the formation of a separate firm in Calgary operating under the name "Black and Associates". On April 9, 1981, before the Law Society was approached with the new proposal, the Benchers passed a motion providing that a committee consider the principle that resident members of the Law Society not be permitted to form partnerships or associations with persons who are not members of the Law Society. A committee was created to consider the motion.

In June 1981, the Benchers approved in principle the predecessor of Rule 154, which provided that resident members not be permitted to practise law with non-members. On September 1, 1981, Black & Co. was formed and commenced operations in Calgary. The partnership was made up exclusively of members of the Law Society of Alberta, some of whom resided in Calgary and some in Toronto. Shortly after Black & Co. commenced operations, W. Code, a Bencher of the Law Society, lodged a complaint against Mr. Black, one of the partners of Black & Co., claiming that it was improper of him to be a member of more than one firm. The issue was taken to the courts. At the initial hearing the Alberta Court of Queen's Bench (1984) supported the Law Society suggesting that the professional regulatory body had the jurisdiction to restrict interprovinvcial firms. The Court rejected the argument that the professional association was acting "in restraint of trade" by noting that the very nature of a professional association was, itself, in restraint of trade. The Alberta Court of Appeal (1986) overturned the decision stating that the restrictions violated the mobility rights of individuals in the Canadian Charter of Rights and Freedoms. Observing that "state economic concerns and the rights of the individual are intertwined" the Supreme Court of Canada (1989) confirmed the decision. The decision buttressed the notion that professional controls were succumbing to economic interests. It also opened the door to the establishment of national law firms in Canada. It is important to note that, unlike the previous challenges that originated with consumers and disenfranchised lawyers, this challenge was initiated by a large, established firm, armed with the financial resources to sustain a long and expensive legal battle.

At the same time as court challenges were undermining the economic closure provided by professional governance, *state* regulators were beginning to demand greater public accountability from lawyers' professional associations. The Office of Professions was established in Quebec in 1974 in an effort to give the government more direct control over the disciplinary process for incompetent professionals (Barreau du Quebec, 1984). In Alberta, the government encouraged the Law Society of Alberta to appoint members of the public or 'lay-Benchers' to the governing body of the society (Interview, Law Society of Alberta Executive, 2000). Since 1984, the Law Society of Alberta has had two lay benchers.[9] The Alberta government also appointed the *Council of Professions and Occupations* in 1989 to develop policies for governing professions and occupations generally (Government of Alberta, 1990).

In 1970, the *Law Society Act* of Ontario was revised in response to expressed concerns about the accountability of the legal profession (Tuohy, 1982). Two major amendments were created. First, lawyers who had been disciplined by the law society were, for the first time, given the right to appeal such action to the courts. Second, public members or lay benchers were given the right to sit on the managing council of the law society (Gill, 1988). In 1976, the provincial government appointed the *Professional Organizations Committee* of Ontario with the express mandate of "improving the accountability of the legal profession" (Ministry of the Attorney General of Ontario, 1980: 2). Its recommendations included a proposal to give lay benchers a majority status on the Complaints Review Committee, a key committee that dealt with complaints against lawyers by members of the public ( Ministry of the Attorney General of Ontario, 1980: 234).

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[9] The first lay-Benchers in Alberta were Mr. V.C. Morrison of Calgary and Mr. A.V. Thibideau of Edmonton.

These regulatory challenges initiated a process by which the authority and legitimacy of professional controls in law were eroded and a growing awareness of law as a competitive business. Although the legal decisions do not clearly specify *why* the courts were suddenly so willing to overturn long-standing rules preventing competitive behaviour, they are helpful in identifying three significant categories of actors that provoked the changes.

1. *consumers*: The courts were obviously influenced by the growing strength of consumer movements in North America. In the latter 1960s and early 1970s many North American consumers formed powerful organizations designed to lobby government, organize economic boycotts and launch court challenges. Over time the "industry" of consumerism "evolved from a few organizations 'selling' primarily legislation into an enormous network of organizations and institutions (Bloom and Greyser, 1981). The decisions that removed advertising controls and fee-tariffs explicitly acknowledged the importance of consumer interests and the Goldfarb case was financed by an organized group of consumers.

2. *disenfranchised lawyers:* Young lawyers, who sought to establish low cost legal clinics for low and middle class consumers were the primary actors in removing professional restrictions on advertising. Market observers have suggested that their challenge on the advertising rules was a direct result of the explosion in the population of lawyers in the late 1960s and early 1970s (White, 1981). Unable to secure positions in the established firms, newly minted lawyers were forced to enter solo practice in an increasingly competitive market. Advertising was the best alternative to attract new clients. Restrictions on

advertising, as noted in the court decisions, offered a competitive disadvantage to this segment of the profession.

3. *large law firms:* One large law firm was instrumental in challenging the professional restrictions on inter-provincial mobility in Canada. At the time of the challenge, McCarthy and McCarthy was the largest law firm in the country. Its motivation in challenging the regulations was to become even larger.

Who, within the profession, resisted these changes? Clearly, the professional associations were the most aggressive in resisting the changes. Local, state and provincial bar associations took an active role in suppressing change. In the *Black and Company* case, the Law Society of Alberta's actions were characterized by one judge as "changing the rules in the middle of the game" to resist the expansion of Ontario firms. It is not entirely clear, however, which constituency of the legal profession the professional associations sought to protect. In Alberta, the Benchers who ruled on the *Black* decision were broadly representative of all segments of the Alberta bar, including members from large, small and intermediate firms in relatively equal number. One might, however, infer that the primary resistance, in the *Black* case, came from large local firms. The complaint originated with William Code, a Bencher, but also founding partner of Code Hunter, one of the largest firms in the province at that time. Moreover, the committee struck to deal with the issue was composed of nine Benchers, all but three of whom were affiliated with large provincial firms.[10]

### Shifting institutional logics: law as a business

The foregoing changes in the market, demographic and regulatory context constituted the basis of a fundamental shift in the institutional logic of North American lawyers away from a field in which control was expressed primarily through professional structures to a field where economic factors were allowed to operate more openly. The public manifestation of this shift was a growing awareness that law was now perceived, amongst lawyers, as being more a *business* than a profession. Conversely, taken-for-granted assumptions and rationalized myths about the necessity of self-governance and the public nature of legal services became visible and contestable.

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[10] The *Ethics and Unauthorized Practice of Law Committee* of the Law Society of Alberta in 1981, which first considered the Black application consisted of the following members (categorization of affiliated firm size appears in brackets): R.P. Fraser-Chair (large firm), Jack Agrios (large firm), C.D. Evans (large firm),

There was growing awareness amongst lawyers in both the US and Canada that they were engaged in a competitive business. There was also a growing concern, primarily amongst professional regulators and legal academics, that the competitive aspects of law threatened to usurp its professional character. In 1986 the American Bar Association commissioned an inquiry into the threat of increased 'mercantilism' in law (American Bar Association, 1986b). The following quotation, taken from the proceedings of that commission, demonstrate the traditional logic of professional control and the fear that economic motives in law might undermine those controls:

> "Cumulative evidence indicates a serious decline in the American lawyer's professionalism and independence in the last ten years. This erosion has brought about a crisis in the American legal community and may, unless checked, bring about a crisis in American life. These developments are not so much the fault of the American legal system or American law school training as of short-sighted attitudes and perspectives of a growing number of American lawyers that practice law as a business rather than as a profession" (American Bar Association, 1986b: 25).

The legitimacy of law as a business was reinforced by the rapid growth of legal services relative to the overall economy (US and Canada). In the US, legal services increased its contribution to the nation's income from less than 0.5 per cent in 1950 to well over 1 per cent by 1985. By the mid-1980s legal services contributed over 48 billion dollars to the US economy, surpassing both the steel industry ($ 30 billion) and textiles ($38 billion) and nearly reaching the auto industry ($ 50 billion) (Sander and Williams, 1989: 434-5). Legal services received a separate Standard Industrial Classification (SIC) from the US Department of Commerce in 1980, further reinforcing the perception both within the profession and amongst consumers that law was an important commercial

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W.J. Girgulus (large firm), H.F. Landerkin (large firm), E.A. Marshall (small firm), L.J. Pollock (academic), W. Kempo (large firm) and R.S. Thorp (small firm).

contributor to the overall economy. Law Practice Management was established as a membership category in the American Bar Association in 1980 and quickly became (and retained its status as) the fastest growing sector.

The cognitive shift to law as primarily a business was reinforced by the establishment of several publications in the latter 1970s that emphasized the business aspects of law. These publications included *The National Law Journal* in 1978 and *American Lawyer* in 1979. Articles in these publications touted the practice of law as a business and, as wryly noted in a publication of the State Bar Association of New York, "service to clients and the inherently client centred nature of professional activity became obscured in a preoccupation with the size of law firms, their financial success and the so called bottom line" ( New York State Bar Association, January 8, 1999, p. 13). In its inaugural editorial statement, however, the *National Law Journal* defended its openly commercial stance by citing "widespread disenchantment with the judicial system and the legal profession as revealed by public opinion polls" (August 7, 1978, p. 19). The editorial statement vowed to be openly critical of the profession when warranted and promised the exposure of top salaries at top law firms.

The impact of this new awareness of competitor's salaries must not be underestimated. For the first time lawyers could compare individual and firm earnings. Steven Brill, founder of *American Lawyer*, commented on the influence of his magazine on lawyers' open acceptance of the practice of law as a business:

> "Its all my fault. Before we began publicizing the money the partners in the big law firms made, a man might be satisfied with the two hundred thousand dollars a year he was receiving from Millbank Tweed. But when he read in *American Lawyer* that a classmate of his who had gone to Cravath, Swain & Moore was making four hundred thousand dollars, he demanded more…he could move to Cravath and still be in his country club. So he moved" (Linowitz, 1994: 32).

In Canada, publications of lawyers' earnings began in 1987 by *Canadian Lawyer*. Unlike its American counterpart, however, *Canadian Lawyer* did not provide firm specific earnings. Rather it aggregated earnings by city or region and size of firm.[11]

Canadian professional associations engaged in a similar program of self-analysis. In 1992 the Federation of Law Societies of Canada organized a symposium under the title of "What is professionalism?" (Gonthier, 1991). The Law Society of Alberta's *Future's Committee* was organized in 1991 on the mandate of determining whether the growing economic pressures on Alberta lawyers presented a threat to professionalism (Hurlburt Interview, 2000). The Canadian Bar Association organized a symposium at its 1991 annual meeting titled "Law-Profession or Business?" (Canadian Bar Association, 1991).

The shift toward viewing law as more a competitive business than as professional calling was reflected in changes in the social organization of legal practice in North America. Foremost among these was the introduction of management principles and discourse into law firms. As Powell (1985: 208) observed:

> "the lingua franca of law firms, especially medium and large firms in the urban areas, now includes the jargon of contemporary management: mission statements, objective setting, strategic planning, marketing, business teams, profit centres, performance appraisal, market niches and so on. Most medium or large urban firms employ practice or general managers to run the business side of their practices, some of whom come from outside the legal profession altogether. Firms are likely to be organised into business teams with detailed budgets and income objectives which they are expected to meet...business management ideas have moved from the distant periphery of legal practice towards its centre".

The growth in the market-based logic of legal practice may be evidenced by the concomitant emergence of a "legal management" industry. As more law firms began to hire non-lawyer managers, the *Association of Legal Administrators* was formed in 1980 and, by 1999 boasted over 5000 members.[12] Similarly, as law firms hired marketing directors, a position unknown in 1980, but by 1985 a

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[11] No Canadian legal publications mimicked the American Lawyer's ranking of firms by revenue or openly celebrated the business aspects of large law firms until 1999 when L'expert: the business magazine for Lawyers began publication. The inaugural circulation statement of the magazine emphasized its focus on "the business of law" and the "new market" for legal services (Lexpert circulation letter, June, 1999).

*National Association of Marketing Administrators* had also been established. An entire service industry suddenly emerged to attend to the previously suppressed business aspects of law, including law firm management consultants, law search firms, lawyer out-placement services, lawyer software system providers and public relations specialists for law firms.

### Interest dissatisfaction in the legal profession

Changes in market, demographic and regulatory context increased the degree of "interest dissatisfaction" (Greenwood & Hinings, 1996) within law. Dissatisfaction within the profession can be measured in several ways. One such measure is the dramatic appearance, in the late 1980s and early 1990s, of a series of articles critical of the profession. Articles such as Aaron's (1989) "Running from the Law: Why good lawyers are getting out of the legal profession", outlined issues of diminished career expectations and gender dissatisfaction in the profession and were supported by academic studies which documented growing dissatisfaction with career opportunities by young practitioners (Glasser, 1990) and female lawyers (Wallace, 1991).

Perhaps the best indicator of dissatisfaction with prevailing practices, however, is the emergence in the late 1970s and early 1980s of experimental organizational forms for delivery of legal services. Legal franchises, such as Hyatt Legal Services, first appeared in North America in the 1977. Franchise law firms are multi-branch firms that have an administrative hierarchy and large numbers of salaried lawyers (Seron, 1996) instead of formal partnerships. Such firms tend to focus on the provision of relatively routine or commodified legal services such as wills, real estate and non-contested civil matters. The target consumer of franchise legal services is an individual rather than a corporation or large organization. Franchise law firm customers select firms on the basis of convenience (most are situated in shopping malls) and use the firms for isolated transactions (Jensen, 1989; Snider, 1987). Competing on the basis of low cost,

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[12] National Association of Legal Administrators website, January 12, 2001.

franchise firms have been compared to McDonalds hamburger chains and described as providing 'cheap law to the masses' (Snider, 1987).

In Canada a proposal for a chain of low cost, high volume legal services was first proposed in 1986 (Stager and Arthurs, 1990). The chain was to be called Advocate Legal Centre and its founders had plans to place offices in major shopping centres in all four western provinces as well as Ontario. The proposal failed, partly for financial reasons and also from strong resistance from provincial bar associations. The chain would have had to challenge inter-provincial practice restrictions (as McCarthy & McCarthy ultimately did) and face rules such as those of the Manitoba Law Society, passed specifically to counter the Advocate Legal Centre, that would have required lawyers in the franchise to be part of every provincial bar association in which the franchise had offices.

Jacoby and Myers suffered similar pressures from professional associations when the franchise was first established as storefront operations in lower middle class neighbourhoods of Los Angeles. The California bar, for example, "brought charges against them claiming they were violating the professional code by using a fictitious name, Jacoby and Myers Legal Clinic, and that they had transgressed the lines of permissible solicitation by holding a press conference to talk about their law business (Seron, 1996, p1).[13]

The presence of legal franchises raised the possibility of such firms migrating into other services. Indeed, during this period, many law firms in Canada and the US did explore alternative revenue sources by establishing "ancillary businesses" or firms that, while not engaged in practicing law, took advantage of their relationship with a law firm. Such ancillary businesses operate at arm's length from the law firm and are usually incorporated as entities wholly owned by the partners of the law firm.

Arnold & Porter, a large law firm based in Washington D.C., was one of the first US law firms to establish an ancillary business (Linowitz, 1994: 163). In

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[13] Hyatt Legal Services is the second largest franchise law firm in the US. It was established in 1977. It popularized the concept of providing inexpensive, flat fee legal services. In the mid-1980s it had almost 200 offices nationwide. Since then, Joel Hyatt, who was the co-founder, sold off the offices to lawyers

1984 the firm founded a political lobbying firm. Over time they expanded into a number of related organizations particularly financial consulting with the establishment of Secura Group, one of the largest bank-consulting firms in the US. By 1992, thirty three of the 250 largest US law firms conducted 48 ancillary businesses in such diverse areas as real estate development, management consulting, title insurance, management information services, public relations, international trade consulting, employee benefits consulting, financial planning, educational consulting, environmental consulting, private judging and general business consulting (*National Law Journal*, December 21,1992).

The American Bar Association quickly attended to contain the expansion of ancillary businesses. In 1986, the "Stanley Report" of the ABA *Commission on Professionalism* bemoaned "what it perceived to be an increasing participation by lawyers in business activities" (American Bar Association, 1986b: 12). In 1991, the House of Delegates, the governing body of the American Bar Association, consisting of elected members from across the country, passed Model Rule 5.7, which formally condemned ancillary businesses. The Model Rules are not binding unless adopted by state and local bar associations. Despite the prohibitions, ancillary business practices have expanded in the US, primarily among large, full service law firms.[14]

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employed in the individual offices and the company charter was cancelled in 1999. Hyatt is now a professor of entrepreneurship at Stanford University Graduate School of Business.

[14] Following is a list of those US law firms with publicly acknowledged ancillary business practices. The list is not intended to be exhaustive: Littler Mendelsohn, a mid-size San Francisco firm which concentrates its practice in management side labour relations established Employment Law Training Inc. which trains clients on labour strategies. Howrey & Simon, a large Washinton D.C. firm has three subsidiaries: "Capital Environmental" which has 10 scientists and other specialists who provide risk analysis and assessments of environmental disasters; "Capital Accounting" which has 15 accountants and assists litigants represented by the firm in measuring their damage exposure; and "Capital Economics" which has more than 30 economists and accountants who perform market analyses for mergers and acquisitions. Dickinson, Wright a large law firm from Detroit established "Technology Consulting Partners" a computer consulting firm that lists Chrysler Financial, Dollar Rent-a-Car and Thrifty Rent-a-Car as clients. Holland & Knight, a large New York law firm has established Holland & Knight Consulting Inc. that includes a private investigation branch, international translation, forensic accounting, real estate consulting, environmental consulting, corporate compliance consulting and maritime compliance consulting. McGuire, Woods, Battle & Boothe, a mid-size Richmond Virginia firm has formed a corporate consulting subsidiary to provide public relations, political lobbying and business relocation services. New York's Kill & Olick, a mid-size firm with a specialized practice in insurance litigation announced the formation of an insurance consulting firm. Ruskin, Moscou, Evans & Fatischek, a small New York firm, recently created Island Star Capital, an investment bank specializing in mergers and acquisitions.

The American Bar Association formed a commission to study the desirability of lawyers providing alternative services. For lawyers to provide such services *within* their firms, the American Bar Association would have to amend Model Rule 5.4 of their Code of Professional Responsibility. Adopted in 1928, Rule 5.4 prohibited the sharing of legal fees with a non-lawyer and also prohibited forming a partnership or other association with a non-lawyer where any of the activities of the partnership or association consist of the practice of law. After considerable debate, the ABA placed restrictions on ancillary businesses in August, 1991 by enacting Model rule 5.7, which provided that law firms could provide non-legal services which are ancillary to the practice of law only when those services were "ancillary to, in connection with and concurrent to the provision of legal services" (ABA Journal, October, 1992: 110). One year later, after considerable pressure from both large urban firms and small rural lawyers, the prohibitions were dropped (ABA Journal, October, 1992).[15]

In Canada alternative business practices have been recognized as a 'problem' by professional regulators since 1989. That was the year the Law Society of British Columbia established a committee to inquire into the ancillary business practices of some of its members. Citing the increased number of lawyers in practice and the increasing competitiveness of the practice of law as a cause of the ancillary business practices (*Advocate*, 1991: 415), the committee acknowledged a growing "perception that, at a time when the amount of [legal] work *available* to be done is shrinking, there are more people available to do the work."

The British Columbia Committee acknowledged ancillary business practices were a growing concern in the US and observed that the Committee had:

> "reviewed a proposal by a Vancouver law firm to become a 50% shareholder in an ABA [ancillary business arrangement] which would provide public relations (lobbying) advice. Other British Columbia firms

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[15] Arnold & Porter, one of the ten largest US law firms, submitted a lengthy brief in support of ancillary businesses. Small town lawyers, such as Allen E. Brenecke of Marshalltown, Iowa, also supported ancillary services. In his submission Brenecke observed that the restrictions would impair the livelihood of many small town lawyers who offer trust, title, tax or insurance services in addition to legal work.

> have interests in ABAs engaged in computer consulting, trade consulting and land titles search services to give only a few examples" (*Advocate*, 1991: 417).

The Committee observed that ancillary business practices were a preliminary step in the direction of multidisciplinary partnerships, or firms composed of partners from other professions, because, it was reasoned, the next logical step, for a firm permitted to provide ancillary business services would be to seek organizational efficiencies and synergies by offering those services *within* the law firm.

The primary questions regarding regulation were, first, if permitting ancillary business practices or multidisciplinary partnerships was in the public interest and, second, how granting permission for such alternative organizational arrangements would impact the core values of the profession, including self-regulation, confidentiality and privilege and conflicts of interest. Although the Committee's final report was highly suspicious of ancillary business arrangements, it stopped short of outright rejection and required ancillary businesses to provide insurance and trust funds, similar to a law firm and prohibited lawyers from owning more than ten per cent of such businesses. The Report concluded with a call for a legislative extension of the Law Society's power to regulate non-lawyers engaged in ancillary businesses.

The Alberta Law Society established a committee to monitor ancillary businesses in 1993. The *Final Report* of the Committee observed that ancillary businesses were most likely to occur in large, urban firms with relatively sophisticated clients and, as a consequence, the best means of regulation would be to simply require such firms to disclose to their clients the risk that the typical protections of a solicitor client relationship, such as privileged communications, may not apply (Flynn, 1996).

Significant dissatisfaction by legal professionals motivated the fascination with ancillary businesses within the legal profession in North America. Part of their dissatisfaction was based on perceptions of limited economic opportunities in the profession. The Law Society of British Columbia made this observation during their hearings. The Law Society of British Columbia's *Subcommittee on Ancillary Business*, for example, prefaced their report with the observation that "[t]here are persuasive and competitive forces favouring the development of multidisciplinary practices. In large part this is due to the increasing competitiveness of the practice of law" (*Advocate*, 1991: 415).

Both the upper and lower echelons of the profession appear to have been attracted to the notion of providing ancillary businesses. Large urban firms with highly specialized practices were under significant pressure from their corporate clients to provide non-legal services. As the B.C. Committee observed, "the [ancillary business] phenomena confirms the reality that clients' problems cannot be neatly compartmentalized into 'legal' and other watertight categories" (Advocate, 1991: 416). The American Bar Association's *Commission on Multidisciplinary Practice's Report to the House of Delegates* (1999), however, acknowledged substantial involvement in ancillary businesses by small, rural practitioners who provide financial, accounting, tax and related services to their community.

### The Locus and Expression of Dissatisfaction within The Field

A variety of social actors within the field expressed dissatisfaction with the prevailing institutional structure of professional controls. State governments encroached on professional autonomy as they sought greater accountability. Consumer groups, representing middle and lower class consumers of legal services, challenged professional constraints on the price of legal services. And lawyers, themselves, challenged the legitimacy of professional constraints on their competitive behaviour. Collectively, these actors represent a variety of diverse efforts to redefine the field in order to more closely align the delivery of legal services with an external environment that was reconfiguring around a logic of increased competition based on market controls.

It is instructive to analyze the locus of dissatisfaction *within* the legal profession. Lawyers are a highly stratified community (Heinz and Laumann, 1982). At least two sub-groups, representing opposite ends of the social scale identified by Heinz and Laumann (1982), were actively engaged in expressions of dissatisfaction with the profession; young, disenfranchised lawyers acting in small firms or sole practices and lawyers acting on behalf of large law firms. The motivations and strategies of each group were, however, quite different and are worthy of closer examination.

It was primarily young, newly admitted lawyers or lawyers from ethnic minorities who challenged the advertising restrictions and experimented with legal clinics and law franchises. These lawyers sought to embrace the new business-oriented ideology within legal practice by applying efficient business practices to the traditional small law firm. Seron (1996: 35), labelling the efforts of such lawyers as the 'true entrepreneurs' in the profession, described the subgroup in this way:

> "They stake out a commercial niche and create specialized businesses premised on the opportunities of a wider, service based economy. Building on the ideological tension between commercialism and professionalism, they take the next logical step by incorporating ever more modern business techniques into the delivery of legal services."

This segment of the profession were sensitive to the dissatisfaction of middle and lower class consumers and created their practices on the premise that such clients are more interested in price than quality and that their legal concerns are, largely, routine and best dealt with by standardized practices. Borrowing on the language and symbols of the growing consumer movement, they positioned their practices in shopping malls, storefronts and in residential areas.

It is important to observe, however, that this subgroup of lawyers advocated their changes by attempting to modify the existing regulatory framework. Their court challenges sought to locate their innovative practices *within* the legal profession and hoped to expand the resource base of the profession, and their rewards, by making traditional practice more efficient.

This was not the case for lawyers engaged in ancillary business practices. These innovations in practice occurred primarily by large firms in an urban setting. All of the firms listed in the Final Report of the *American Bar Association Commission on Multidisciplinary Practices* (1999) qualify as large firms, according to Galanter and Palay's (1991) threshold of fifty or more lawyers. Similarly, the B.C. Committee charged with investigating ancillary businesses observed that the bulk of actors were either large firms pushed by their clients to providing 'one stop' services or highly specialized small firms with a predominantly corporate clientele (Interview, BC Law Society Executive, 2000).

### The Multidisciplinary Debate First Emerges

It was in the context of increasing dissatisfaction within and outside the legal profession, and ongoing experimentation with the organization and delivery of legal services, that the notion of multidisciplinary partnerships (MDPs) in law first emerged in North America. We examine, first, the emergence of the MDP debate in Canada and then the US.

In Canada, the initiative to establish MDPs varied between the profession and various provincial governments. In Ontario the initiative came from the *Professional Organizations Committee* established by the Government of Ontario in 1976. In their 1979 report, the Staff Study to the Committee analyzed the desirability of permitting lawyers to share fees with other professions. The authors of the staff report consisted of three academics from the University of Toronto; Alan Wolfson, a professor of health administration, Carolyn Tuohy, an associate professor of political economy and health and Michael Trebilcock, professor of law and director of the Law and Economics program.

The Report endorsed a limited form of MDP, suggesting that lawyers be permitted to form partnerships with certain designated professionals, including accountants, but not with non-professionals (Trebilcock, Tuohy and Wolfson, 1979). The authors argued that "multidisciplinary firms create the potential for more efficient allocation of functions among members of a multi-disciplinary team" while noting that "the effect of the substitution of functions is that formally unqualified persons may be performing professional functions otherwise appropriated exclusively to licensed professionals" (Trebilcock, Tuohy and Wolfson, 1979: 368-9).

The *Staff Report* suggested the use of 'market based' controls to replace professional sanctions for multidisciplinary firms. Civil court sanctions, they argued, would provide an adequate form of control over such entities:

> "The prospect of civil liability awards for professional negligence and the importance of not endangering individual licenses or endangering the certificates of authorization of the firm as a whole provide sufficient assurances of competent professional service" (Trebilcock, Tuohy and Wolfson, 1979: 373).

The *Staff Report* did not stimulate much debate and the recommendation that the professions seek to develop "intra and inter professional institutional arrangements for promoting and vetting multidisciplinary firm arrangements (Trebilcock, Tuohy and Wolfson, 1979: 375) was dropped from the Final Report of the Committee.

The issue of MDPs remained quiet in Ontario, until 1987, when the Law Society of Upper Canada issued a consultation paper on MDPs. The 1987 paper was the result of growing concerns about ancillary business practices in the profession and the suggestion that, ultimately, lawyers would want to merge their legal practices with their related businesses (Varro Interview, 2000). The 1987 consultation with members showed that a bare majority of respondents (54%) favoured a relaxation of the ban on MDPs so long as solicitors remained in control of the firms (Law Society of Upper Canada, 1987).

In 1989 the Government of Ontario, through the *Committee on Professions*, issued a Green Paper that proposed a removal on the ban on fee splitting in the legal profession. The proposal cited the benefits to consumers in creating one-stop shopping for legal services in support of the proposal (Government of Ontario, 1989). The Law Society of Upper Canada successfully opposed the government proposals, arguing that MDPs would violate professional values and would undermine professional privilege (Law Society of Upper Canada, 1998a).

In Quebec the issue of MDPs was raised in August, 1984 by both the professional association responsible for governing lawyers (Barreau du Quebec, 1984) and the provincial government within the context of a general review of legal services in the province. A committee was established by the Barreau (the "Tellier Committee") to study the desirability of MDPS. The establishment of MDPs was ultimately endorsed by the final Report (Barreau du Quebec, 1984) which acknowledged that professions were already operating in a multidisciplinary fashion:

> "The multidisciplinary phenomenon now exists in several areas of activity. If the legal community wants to maintain its credibility and reputation among clients, sooner or later the Barreau will need to accept that its members form partnerships with other professionals, but under certain conditions…" (Barreau du Quebec, 1984: 21).

In 1985 the General Council of the Quebec Bar adopted an amendment to section 15.2 of the *Bar Act* at its October 8, 1985 session:

> "The General Council can:
> i) at its discretion enter into an agreement with other governing bodies, allowing members of those other governing bodies to form partnerships with members of the Barreau."

Despite the Barreau's establishment of rules that effectively permitted the creation of MDPs, and a subsequent study by the Quebec Government that viewed MDPs favourably (Quebec Professions Board, 1985) no regulatory or legislative amendment was made by the General Council to provide for MDPs. Significantly, the ethical rules prohibiting fee-splitting remained in force.

The Law Society of British Columbia struck a committee to inquire into MDPs in May of 1989 (*Advocate*, 1991). The terms of reference of the Committee were quite broad and included "considering the 'pure' multidisciplinary (and law firm employment of other professionals) regime, recapturing lost areas of practice, new frontiers of practice, lawyers practicing concurrently with other businesses and law firms engaging in ancillary business activities" (Advocate, 1991: 415). Initially the committee focused almost exclusively on the issue of ancillary business activities because this was "the more pressing concern at the time" (Interview, BC Law Society Executive 2000). In 1994, the Committee issued regulations regarding the control of ancillary businesses but did not offer any rules or comment regarding MDPs.

Although the issue of MDPs was considered to be important, there was no sense of urgency about the issue amongst professional associations in Canada. Many, such as the Law Society of Alberta, were content to monitor the situation by asking committees in other jurisdictions to provide them with copies of their reports (Interview, Law Society of Alberta Executive, 2000). They also monitored developments on the MDP issue in the US with considerable interest. Like the BC Law Society, however, the Alberta Law Society was more concerned with the question of ancillary business practices.

The MDP debate emerged in the US in 1977 when the American Bar Association, citing demand by members, announced the creation of a commission, under the chairmanship of Arthur Kutak, to study the desirability of MDPs. As part of its mandate, the Kutak Commission examined those ethical rules that discouraged fee sharing and mixed professional partnerships. Such rules have existed since 1908 in the US (Gilbert and Lempert, 1988). Express prohibitions against MDPs have existed since 1969 with the adoption, in the American Bar Association Model Rules of Professional Conduct, of rule 5.4 which prohibited fee sharing.

After considerable study and a number of public meetings the *Kutak Commission*, in 1982, proposed an amendment to ABA Model Rule 5.4 that would allow law firms to form MDPs as long as lawyers within the firms met their overriding ethical obligations and professional responsibilities. The existing rules that prohibited sharing fees were, according to members of the Commission, only tenuously related to substantial ethical concerns about [lawyer-non-lawyer] relationships" (Gilbert and Lempert, 1988) and more directly related to efforts to maintain monopolistic jurisdictional boundaries in law. The Commission went on to criticize existing regulations as a form of economic protectionism for traditional legal services that served to impede development of new methods of delivering legal services (Gilbert and Lempert, 1988).

The ruling body of the American Bar Association, the House of Delegates, rejected the proposed amendment during the Annual General Meeting of 1983. Reports of the House of Delegates vote published in the American Bar Association Journal identify two major sources of opposition; agents of state professional associations and 'traditional' practitioners or lawyers in small and intermediate firms (ABA Journal, October, 1983).

The primary reason given for rejecting MDPs was a fear that allowing lawyers to offer additional services outside the practice of law would extend reciprocal rights to other service providers. A representative of the state bar of Ohio, arguing against the amendment, asked, "How will you explain to the sole practitioner who finds himself [in] competition with Sears why you voted for this?" (Gilbert and Lempert, 1988). Other objections to MDPs included the potential competitive threat of large accounting firms:

> "(1) the Commission proposal would permit Sears, Montgomery Ward, H&R Block or the Big Eight accounting firms to open law offices in competition with traditional law firms; (2) nonlawyer ownership of law firms would interfere with the lawyer's professional independence; (3) nonlawyer ownership would destroy the lawyer's ability to be 'professional' regardless of the economic cost; and (4) the proposed change would have a fundamental but unknown effect on the legal profession" (Andrews, 1989: 594).

The "fear of Sears" became the popular justification for rejecting the recommendations of the *Kutak Commission*. The final version of the approved Model Rules affirmed existing prohibitions on non-lawyer partnerships with lawyers.

The American Bar Association has no coercive power over its membership. Instead it serves a normative role, suggesting model rules that, historically, have been followed by its members. That is, despite its lack of direct, coercive authority, the ABA traditionally exercised considerable control over how law was practised. This influence was apparent in the present context: the rejection of MDPs by the ABA was uniformly followed by all but two member states: North Dakota and the District of Columbia.

North Dakota lawyers considered adopting a version of the *Kutak Commission's* recommendation on MDPs. A committee concluded that lawyer and non-lawyer associations should not, as a general proposition, be considered unethical. The committee, however, was unwilling to recommend changes to their legislation that would allow professional corporations that cut across professions (Gilbert and Lempert, 1988: 401). The recommendation was, therefore, largely symbolic. Ultimately, the recommendations were rejected without reasons by the North Dakota Supreme Court, which has final authority over such issues (Gilbert and Lempert, 1988: 401).

The District of Columbia, however, adopted regulations in 1991 that allowed lawyers to share fees with non-lawyers, but *only* if the firm was engaged 'primarily' in the practice of law *and* if the firm was 'controlled' by lawyers (American Bar Association, 1999b). The regulations also required significant public disclosure obligations and, as a result, few firms registered as MDPs in the District of Columbia. In testimony before the ABA inquiry into MDPs in 1999, Susan Gilbert, the Ethics Council for the District of Columbia confirmed that less than a dozen D.C. firms appear to have non-lawyer partners as a result of the restrictive regulations (Gilbert Testimony, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., November 12, 1998: 1).

### Stage One: Analytic Discussion

The events described above permit some preliminary observations about the role of shifting governance mechanisms in the emergence of new organizational forms for the delivery of legal services. Foremost is the observation that the institutionalized schema of professional governance dominated law in North America for several decades prior to the 1970s. The ideology underpinning this mode of social control emphasized faith in lawyers to regulate their own affairs. This belief was shared by lawyers and actors outside the profession and allowed lawyers to exclude non-lawyers from a wide range of legal activities. It also allowed lawyers to exert tight controls over their own labour supply and product market.

The autonomy of professional controls was legitimized by a set of beliefs in which lawyers portrayed themselves as powerful guardians of social rights and denied, at least publicly, economic self-interest in their work. Legal services were portrayed as a public good, useful in maintaining social rights and protecting the individual from the coercion of the state. The social construction of professional controls deliberately de-emphasized the commercial component to legal work.

Professional controls produced a collective strategy that benefited the entire community for a considerable length of time. Not only were gross incomes continually growing, but inequalities in incomes were decreasing until the mid-1970s. Professional controls, therefore, produced incentives for maintaining the 'professional project' and discouraged any attempt to defect or experiment with alternate forms. It also encouraged the ongoing reproduction of rationalized myths about the legitimacy and necessity of professional controls.

The trigger for dismantling this collective strategy was a change in the availability of rewards, and their distribution, after 1975. Not only were the average salaries of the entire community decreasing, but differences in income between the top and bottom echelons were increasing. Economics provided the incentive to defect from professional controls. It would, however, be an oversimplification to say that economics alone determined the shift in governance. Economic change does not occur in a vacuum. These economic changes were preceded, by nearly a decade, in rapid demographic changes in the profession. Increased numbers of lawyers and their ethnic composition influenced changes to the locus and mode of delivery of legal services in North America.

External challenges to professional controls came, primarily, from consumers. The consumer movement, however, was supported by the actions of government and the courts and was instrumental in dismantling professional controls. Inside the profession, challenges to professional controls came from extreme ends of the profession; both from disenfranchised lawyers and from large and powerful law firms. These actors began to experiment with different organizational forms for the delivery of legal services. Professional associations, who were, ostensibly, acting to protect the interests of the rest of the profession by preserving the status quo, resisted these entrepreneurial efforts.

Market controls became more visible in law which was, increasingly, described as a "legal services industry" rather than a hallowed profession. Traditional restraints on competition disappeared and lawyers could openly "taste the delights of capitalism" (Leubsdorf, 1982: 1029). Ethics commentators began to observe that the "market" was beginning to replace professional regulation as a legitimate means of monitoring legal practice (Leubsdorf, 1982). Between 1975 and 1990 a legal services industry emerged to deal with the newly discovered business aspects of law.

Actors, in this context, were made to choose between two conflicted institutional environments. Small firm lawyers elected to pursue a strategy of introducing business practices into the existing rule structure and did so by directly challenging professional ethics rules. Large firm lawyers selected a strategy of pursuing interests outside the professional rule structure with ancillary businesses. Professional associations perceived both activities as a threat and actively resisted them.

The foregoing discussion suggests the basis for a rational-choice account of institutional change. Professional controls over market behaviour, at the level of individual actors, produced strong collective benefits. This institutional environment was supported by a powerful set of rules and beliefs that, effectively, subordinated competitive behaviour between individual actors in the community. These actors accepted the system, even in spite of individual differences in the distribution of rewards, based on the expectation that their lot, both individually and collectively, would continue to improve. The tipping point, however, occurred when it became evident that these expectations were unfounded. Defections from the 'professional project' occurred and a competing system of beliefs and rules became evident.

This suggests that, over time, as professional controls continued to erode, lawyers might have generated a model of multidisciplinary practice on their own.

It is not entirely clear, however, that professional controls would continue to have eroded. Economic circumstances in the profession improved dramatically after 1990. This may have removed the incentive for change within the legal community. Change, however, would come from outside the profession as accounting firms transformed themselves into professional service conglomerates and presented a direct jurisdictional challenge to lawyers in the market for legal services.

## Stage Two: The Big Five Become Multidisciplinary: 1990 to 1997

This section demonstrates how large accounting firms articulated a distinct model for change in law by producing a concrete model of multidisciplinary practice that included legal services. Large-scale mergers amongst Big Eight firms demark the beginning and end of this period, but the period is more significantly characterized by the migration of these firms away from traditional audit and accounting services to management advisory services. Over time these firms transformed themselves from 'accounting' firms that drew the bulk of their revenue from traditional accounting work to 'professional service' firms that provided a broad range of professional services to assist management of large corporations. Before detailing this transformation, however, we must go back, outside the historical parameters of this period and describe the emergence of a distinct group of very large accounting firms described, over time, as the 'Big Eight', the 'Big Six' and, currently, the 'Big Five'.

### The metamorphosis of large accounting firms

Although the threat from Sears was perceived as the more influential factor in the American Bar Association's decision to reject multidisciplinary partnerships, large accounting firms were already positioning themselves to become the pre-eminent model for providing multiple professional services. Expansion in the scope of services offered by accounting firms has been attributed primarily to two factors; the maturation of the audit market for traditional accounting services such as audit, and the global expansion of the client base of accounting firms (Boyd, 1999).

The identification of the eight largest accounting firms in North America first occurred in a series of articles in *Fortune* magazine in June, 1932[16]. In a review of the "certifications"[17] performed by accounting firms on companies listed on the New York Stock Exchange, Fortune identified eight firms that performed the majority of certifications. The "Big Eight", as termed by the reporter, were Price Waterhouse & Co; Haskins & Sells; Ernst & Ernst; Peat Marwick Mitchell & Co.; Arthur Young & Co.; Lybrand, Ross Brothers & Montgomery; Touche, Niven & Co; and Arthur Andersen & Co.

It is important to acknowledge the size of Big Eight firms in 1932. The Fortune article described Price Waterhouse & Co. as the largest of the Big Eight with nineteen offices in North America, more than a thousand professionals and gross revenues in excess of six million (US) dollars per year. Although, over the next seventy years, some of the names would change as a result of mergers, this elite group of firms would dominate accounting in North America. Table 4.7A tracks the change in size of Big Eight firms from 1980 to the present. Table 4.7B demonstrates the dramatic growth rate in the number of offices and partners of the Big Eight between 1980 and 1995.

By the 1970s most Big Eight firms were international enterprises that were often larger than many of the corporations they audited. By 1975 the Big Eight audited over ninety percent of corporations listed on the New York Stock exchange and by 1988 controlled eighty percent of the global audit market (see Table 4.8). Regulators in the United States began to raise concerns about the dominance of the Big Eight and the concentration of audit services. The US Congress established a commission of inquiry headed by Senator Lee Metcalfe: the *Subcommittee on Reports, Accounting and Management of the Committee on Government Operations of the United States Senate*.

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[16] "Architects of the US Balance Sheets" Fortune June 1932.

[17] Audits were not yet required by publicly traded companies on the NYSE (Wooten and Wolk, 1990).

The *Metcalfe Report* (US Congress, 1977) was highly critical of the Big Eight firms and suggested that these firms controlled the main professional body in US accounting (the AICPA), dominated the audit market for large US corporations and dominated the standards and practices in accounting in the US and throughout the world.

As the Big Eight grew in size, so, too, did the range of professional services they provided. Table 4.9 depicts the changing proportion of profits derived from audit, tax and consulting services for each of these firms from 1975 to 1999.[18] Table 4.9 demonstrates a marked shift in primary revenue from audit services, in the early 1970s, to consulting services by the late 1980s and early 1990s. The shift is more pronounced in some firms, such as Arthur Andersen, where by 1999 nearly 70 percent of revenue came from consulting. Collectively, the proportion of Big Eight revenues derived from consulting changed from 12 percent in 1975 to 26 percent in 1990 and to nearly 50 percent in 1999 (See Table 4.11).

The shift in revenue base of Big Eight firms to non-audit services raised the concern of the US Securities Exchange Commission (SEC). As early as 1979, in an advisory statement, the SEC warned accounting firms and their corporate clients that non-audit services could impair the independence of accounting firms. The SEC identified a range of services that should be limited, including: "actuarial services, plant surveys, consumer surveys and employee benefit consulting (SEC Press Release, June 14,1979).

Although the growth in tax services amongst Big Eight firms did not match the dramatic growth in management consulting, the growing importance of tax revenue provided an early point of competitive interaction between accountants and lawyers. Traditionally, accounting firms offered their corporate clients routine tax return preparation services. Lawyers, however, maintained the exclusive jurisdiction to interpret statutes, including income tax legislation (ABA Journal, February, 1970). Corporate clients, however, increasingly demanded tax-

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[18] Table 10 uses the Big Six as the primary unit of analysis and combines revenues for those Big Eight firms that subsequently merged to produce the Big Six.

## Table 4.7A
## Global Expansion of Big Eight (Five): 1980 to 2000

| 1980<br>Big Eight | | |
|---|---|---|
| Firm | Revenue* ($US millions) | Number of Employees |
| Ernst & Whinney | 500 | 14,000 |
| Coopers & Lybrand | 595 | 12,000 |
| Peat Marwick & Mitchell | 586 | 14,000 |
| Arthur Young | 400 | 15,000 |
| Arthur Andersen | 645 | 15,500 |
| Deloitte Touche | 450 | 10,000 |
| | | |

*Source: Fortune, 1980 and Public Accounting Report, 1981*
**Global Revenue*

| 1990<br>Big Six | | |
|---|---|---|
| Firm | Revenue* ($US billions) | Number of Employees |
| Arthur Andersen | 2.3 | 26,000 |
| Ernst & Young | 5 | 23,000 |
| Deloitte & Touche | 4.2 | 18,800 |
| KPMG | 5.4 | 19,000 |
| Coopers & Lybrand | 4.1 | 16,000 |
| Price Waterhouse | 2.9 | 13,000 |

*Source: Public Accounting Report, 1991*
**Global revenue*

| 1999<br>Big Five | | |
|---|---|---|
| Firm | Revenue* ($US billions) | Number of Employees |
| Arthur Andersen | 16.21 | 135,000 |
| Ernst & Young | 12.58 | 97,800 |
| Deloitte & Touche | 10.6 | 90,000 |
| KPMG | 10.86 | 102,000 |
| PricewaterhouseCoopers | 17.3 | 155,000 |

Source: Public Accounting Report, 2000

## Table 4.7B
## Global Expansion of Big Eight (Five): 1982 to 1995
## Twelve Year Change in Total Number of Offices and Partners

**A. Number of Offices Worldwide**

| Firm | '82 | '88 | '91 | '92 | '95 | % growth |
|---|---|---|---|---|---|---|
| Arthur Andersen | 155 | 217 | 289 | 392 | 454 | 109 |
| Coopers & Lybrand | 424 | 565 | 737 | 805 | 814 | 44 |
| Deloitte Touche | 697 | 986 | 722 | 757 | 781 | -20 |
| Ernst & Young | 530 | 796 | 777 | 812 | 803 | 1 |
| KPMG | 673 | 641 | 864 | 1056 | 1066 | 66 |
| Price Waterhouse | 326 | 424 | 496 | 548 | 536 | 26 |

**B. Number of Partners Worldwide**

| Firm | '82 | '88 | '91 | '92 | '95 | % growth |
|---|---|---|---|---|---|---|
| Arthur Andersen | 1438 | 2133 | 2478 | 2507 | 4294 | 101 |
| Coopers & Lybrand | 2282 | 3341 | 5152 | 5373 | 5528 | 65 |
| Deloitte Touche | 3831 | 5137 | 4823 | 4625 | 4709 | -8 |
| Ernst & Young | 3439 | 5283 | 5700 | 6059 | 6452 | 22 |
| KPMG | 5424 | 5161 | 6530 | 6190 | 6036 | 17 |
| Price Waterhouse | 1677 | 2570 | 3113 | 3245 | 3211 | 25 |

Source: Centre for International Financial and Accounting Research, 1994, Princeton: CIFAR publishing, p. 283.

## Table 4.8
## Global Market for Audit Services, 1975, 1988 and 1995

1975

| Rank | Firm | (%) of listed companies audited measured by gross sales | |
|---|---|---|---|
| | | New York Stock Exchange | American Stock Exchange |
| 1 | Price Waterhouse | 23.8 | 15.7 |
| 2 | Arthur Andersen | 14.6 | 8.6 |
| 3 | Coopers & Lybrand | 11.7 | 6.3 |
| 4 | Haskins & Sells | 12.5 | 5.5 |
| 5 | Peat Marwick & Mitchell | 11.5 | 8.4 |
| 6 | Arthur Young | 6.9 | 8.2 |
| 7 | Ernst & Ernst | 6.9 | 8.8 |
| 8 | Touche Ross | 5.8 | 5.4 |
| Total | | 93.7 | 66.9 |

Source: The Accounting Establishment: Staff Report of the Senate Subcommittee on Government Operations-Subcommittee on Reports, Accounting and Management, 95th Congress, 1st session, 1977. Washington, D.C., p 40.

1988

| Rank | Firm | World Audit Market (%) |
|---|---|---|
| 1 | Arthur Andersen | 5.833 |
| 2 | Arthur Young International | 5.85 |
| 3 | Coopers & Lybrand | 10.86 |
| 4 | Deloitte Haskins & Sells | 8.22 |
| 5 | Ernst & Whinney | 11.11 |
| 6 | KPMG | 17.19 |
| 7 | Price Waterhouse | 11.53 |
| 8 | Touche Ross | 9.71 |
| Total | | 80.63 |

Source: CIFAR, 1994.

1995

| Rank | Firm | World Audit Market (%) |
|---|---|---|
| 1 | KPMG | 19.4 |
| 2 | Ernst & Young | 17.5 |
| 3 | Coopers & Lybrand | 15.5 |
| 4 | Arthur Andersen | 15.0 |
| 5 | Deloitte Touche | 13.4 |
| 6 | Price Waterhouse | 10.5 |
| Total | | 88.5 |

Source: CIFAR, 1994.

## Table 4.9

## Percentage Revenue Split for Individual US Big Six (Five) Firms: 1975 to 1999

| Arthur Andersen | | | |
|---|---|---|---|
| | Audit | Tax | Consulting |
| 1975 | 66 | 18 | 16 |
| 1986 | 47 | 21 | 32 |
| 1994 | 33 | 18 | 49 |
| 1999 | 18 | 12 | 70 |
| KPMG | | | |
| 1975 | 70 | 20 | 10 |
| 1986 | 56 | 22 | 22 |
| 1994 | 49 | 21 | 30 |
| 1999 | 34 | 23 | 43 |
| Deloitte Touche | | | |
| 1975 | 68 | 17 | 5 |
| 1986 | 64 | 23 | 13 |
| 1994 | 52 | 22 | 25 |
| 1999 | 31 | 19 | 41 |
| Ernst & Young | | | |
| 1975 | 68 | 21 | 11 |
| 1986 | 56 | 26 | 18 |
| 1994 | 45 | 19 | 36 |
| 1999 | 38 | 25 | 37 |
| Coopers & Lybrand | | | |
| 1975 | 69 | 19 | 12 |
| 1986 | 60 | 21 | 19 |
| 1994 | 58 | 1 | 24 |
| 1999 | 34 | 19 | 34 |
| Price Waterhouse | | | |
| 1975 | 76 | 16 | 8 |
| 1986 | 58 | 24 | 18 |
| 1994 | 43 | 25 | 32 |
| 1999 | 34 | 19 | 34 |

## Table 4.10

## Proportional US Revenue Sources for Big Eight (Five) Firms: 1975, 1990 and 1999

| | Year | | |
|---|---|---|---|
| | 1975 | 1990 | 1999 |
| Audit | 71 % | 49 % | 30 % |
| Tax | 17 % | 25 % | 21 % |
| Consulting | 12 % | 26 % | 49 % |

*Sources: Public Accounting Report, various years and Fortune.*

*planning* advice from accounting firms. Although accounting firms viewed this as a logical extension of tax preparation services, many lawyers saw this as an encroachment on their jurisdiction over the interpretation of legislation.

Initial skirmishes between the accounting and legal profession over tax planning issues were, in the US, resolved with the establishment in 1951 of the *National Conference of Lawyers and Certified Public Accountants* (ABA Journal, 1970). The initial conference produced a document, the *Statement of Principles relating to Practice in the field of Federal Income Taxation*, which outlined the respective territories for accountants and lawyers in the provision of tax services. For the next forty years, accountants and lawyers used this organization to defuse conflicts arising out of the mutual provision of tax services (DiPiazza Testimony, *ABA Commission on Multidisciplinary Practice*, Washington, D.C., March 11, 1999: 3). The organization advanced the motto "the farmer and the cowman should be friends" (Trieger and Lipton Testimony, *ABA Commission on Multidisciplinary Practice*, Washington, D.C., March 11, 1999: 3).

On occasion joint publications in the ABA Journal and the Journal of Accountancy were used to reaffirm the jurisdictional division between accountants and lawyers in tax services. One such publication, from 1970, acknowledged:

> "More than twenty five years ago the American Bar Association and the American Institute of Certified Public Accountants established the National Conference of Lawyers and Certified Public Accountants to promote co-operation between the professions and to mediate disputes about the practice of law and what is properly that of accounting. In its time the national conference has witnessed the development of cordial and harmonious relations...To this day it stands as a significant example of what two related professions can do working together" (ABA Journal, February, 1970: 416).

The article reproduced the 1951 Statement of Principles and reported that, to date, the original mandate of the conference was being met.

Occasional jurisdictional problems between lawyers and accountants did, still, arise. In 1981, for example, the American Bar Association and the American Institute of Public Accountants (AICPA) adopted a statement in which the two organizations agreed that accounting firms could provide tax planning advice to clients but would not draft legal documents nor appear in federal district courts on tax related issues (American Bar Association, 1999b: 11). Nevertheless, the tensions between lawyers and accountants over jurisdiction in tax matters were generally defused by institutional structures such as the *National Conference on Lawyers and Certified Public Accountants.*

In Canada the jurisdictional lines between tax accountants and lawyers were negotiated informally between the professional associations. Most regulatory jurisdictions in Canada (and the US) fail to provide a definition of the "practice of law". Case law, particularly those cases that include an allegation of the unauthorized practice of law, is the only regulatory guide to the jurisdictional boundaries of the profession. Lawyers and accountants in Canada have achieved a tacit understanding of their respective jurisdictional boundaries, as indicated in this excerpt of an interview with a prominent Alberta based tax lawyer:

> "There is a general understanding, between lawyers and accountants of the line between practicing law and giving tax advice. Accountants cannot, for example, represent clients in court. Accountants similarly, cannot make claims of privilege. Generally, the distinction is that accountants can perform activities in relation to the preparation of tax returns and engage in tax planning activities, but they cannot engage in the interpretation of statutes…although, I must admit, the line seems to be getting fuzzier (Interview, Edmonton Tax Partner, 2000)."

An executive with the Institute of Chartered Accountants of Alberta acknowledges that, although somewhat vague, the distinction has worked well over the years and there are "very, very few" allegations of unauthorized practice of law involving accountants. Those that do arise are, largely, dealt with "informally and congenially between the Institute and the Law Society… they are handled in a cooperative way, although similar incidents got very confrontational briefly in British Columbia" (Interview, Institute of Chartered Accountants of Alberta, Executive, 2000). More importantly the professions in Alberta established a venue for regular meetings and discussions between the professions. Annual meetings of the "Group of Seven" (the seven largest professional associations) are used to defuse tensions and discuss matters of mutual interest. A senior representative of the Law Society of Alberta describes the arrangement as follows:

> "The Group of Seven has been meeting since the early 1970s. It was originally established to deal with issues between the professions and involved annual meetings. Mostly there are few substantive things that the Group has had to deal with so we end up eating and drinking...the only common issue we tend to have is devising strategies of keeping the provincial government out of our hair..." (Interview, Executive of Law Society of Alberta 2000).

The expansion of tax services by Big Eight firms, however, would become more aggressive and, as will be demonstrated, would also become much more confrontational. Moreover, the expansion and growth of the Big Eight would intensify, allowing these firms to defy both regulatory authorities in the state and the legal profession.

By the end of 1989 the Big Eight had reconstituted into the Big Six.[19] An earlier merger of Peat, Marwick Mitchell and Company with the international firm of KMG Main Hurdman in 1986 produced KPMG Peat Marwick. In 1989 two mergers occurred: Ernst and Whinney merged with Arthur Young and Company to form Ernst & Young and Deloitte, Haskins and Sells merged with Touche Ross and Company to create Deloitte and Touche. The end of the period is marked by the announcement (although not the implementation) of a final merger, between Price Waterhouse and Coopers & Lybrand, to create PricewaterhouseCoopers, completing the evolution of the Big Five.

More significant than the concentration in numbers of elite accounting firms during this period is their evolution away from roots in audit and accounting and into 'professional business advisory firms'. This evolution included an expansion in size and a broadening in the scope of services. A related effect was an increase in their relative power. As part of their transformation, Big Six firms disengaged from local professional regulatory agencies and began to exert influence on national regulators and professions (US Congress, 1977). Their encroachment on lawyers' jurisdiction in tax became intense and, in contrast to the previous period, could not be contained or defused by existing institutional arrangements. For the legal profession, the Big Six began to develop a model of MDP in Europe for which legal services were a minor component of a conglomeration of professional services.

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[19] The Big Six were Arthur Andersen, KPMG Peat Marwick, Price Waterhouse, Coopers & Lybrand and Deloitte and Touche.

Before elaborating the emergence of MDPs amongst Big Six firms, it is instructive to examine *why* accounting firms moved away from their traditional work (and toward multidisciplinary practices) so much more quickly than lawyers. There are two primary causes. First, like lawyers, accountants experienced a rapid increase in numbers and a concomitant increase in competition. For accountants, however, the increased population occurred much sooner than lawyers. Tables 1A and 1B, for example, shows that the accounting profession in North America experienced its largest decennial population bulge during the 1950s. By the early 1960s, accountants' average earnings had fallen behind dentists and, apart from a short increase in earnings in the 1970s, never achieved the high average salaries earned by other professionals. This suggests that the economic pressure to diversify services occurred much earlier for accountants.

A second causal element in the early expansion of services by accounting firms was the relative lack of professional boundaries within accounting. Unlike lawyers, accountants never achieved the same degree of economic closure enjoyed by other professions. Part of the difficulty was ongoing competition between rival types of accountants. The *Ontario Professional Organizations Committee* observed:

> "The accounting profession has been historically, and remains in several Canadian provinces a "reserved title" profession whose practitioners have exclusive rights to use the titles bestowed by the organizations of which they are members, but do not have exclusive rights to practice; that is, they are not licensed. Other than in what has come to be called "public accounting", the profession remains unlicensed in Ontario... the remainder of services provided by the accounting profession are of significance primarily to the clients who purchase them" (Ministry of the Attorney General of Ontario, 1980: 125).

Public accountants only achieved market control over audit services in Ontario in 1950 when the *Public Accountancy Act* (R.S.O. 1950 c. 302) recognized the Institute of Chartered Accountants of Ontario and the Certified Public Accountants Association of Ontario as qualified to provide 'public accounts' or what we now term audits.

In the US, accountants first achieved state licensure in New York in 1896. The first model state accountancy law was proposed in 1916 and by 1921 all US states had laws for licensing accountants (New York State Bar Association, 1999). Bare licensure, however, did not provide any form of monopoly over professional practice and a variety of types of accountants and accounting organizations existed. The stock market crash of 1929 provided US Certified Professional Accountants with a limited monopolistic jurisdiction (Wooten and Wolk, 1990). After the 'crash', federal securities laws, promoted by the US Securities Exchange Commission, gave CPAs the exclusive jurisdiction to provide 'certifications' of the financial statements of publicly traded corporations. The limited monopoly over audit services, however, has been subject to constant challenge by competing accounting designations (Abbott, 1988).

Without a state sanctioned economic monopoly, accountants have never achieved the 'social closure' of other professions (Macdonald, 1995). Achieving economic monopoly has been acknowledged, within the sociology of professions literature, as the basis for drawing jurisdictional boundaries around professional knowledge (Larson, 1977). Without such boundaries, accountants were subject, much earlier than lawyers, to the competitive pressures of the market for substitute services. Accounting firms were, therefore, under pressure as early as the mid-1950s to achieve economies of scale and scope within their practices (Wooten and Wolk, 1990). They did so by increasing, dramatically in size and expanding the range of services they provided. As early as 1955 Harvard Law School Dean Erwin Griswold described the emergence of "accounting factories" that had "law departments" that were of a larger scale than many law firms (Griswold, 1955). As a result of early exposure to competition, both within and from outside their profession, accountants, like other "quantitative information professions" (Abbott, 1988: 226) developed a professional culture based on market open competition rather than market closure.

### The rise of the conglomerate professional services firm

Although the movement away from traditional audit services had started in the early 1960s, the migration to management consulting within the Big Six accelerated sharply between 1990 and 1997. Table 4.9 demonstrates the division of revenues for each of the Big Six firms from 1975 to 1997 for both the US and Canada. With the exception of Arthur Andersen, which embraced the move away from audit services in the late 1970s, the Big Six firms show a gradual decline in audit services prior to 1990 and a much faster movement to management consulting between 1990 and 1997. The acceleration of the migration to consulting is, perhaps, better illustrated in Table 4.10, which shows the proportion of collective Big Six revenues by source. In the fifteen years between 1975 and 1990, the collective proportion of consulting revenue increased by approximately 14%. In contrast, in the nine years between 1990 and 1999, the Big Six increased their collective reliance on consulting by twenty three percent.

The success of the Big Six's transition to consulting and tax services can be illustrated by their rapid domination of the global management consulting industry. By 1990 each of the progenitor Big Six firms appeared in the rankings of the world's ten largest management-consulting firms (Table 4.11). By 1997 the Big Six firms dominated the rankings.

During this time the Big Six also made significant advances in the provision of legal services. Much of the initial expansion occurred through the already fuzzy boundaries of tax advice. The expansion of Big Six firms' tax departments and law related management advisory services during this time served to heighten tensions between accountants and lawyers and threatened to undermine the negotiated jurisdictional boundaries between the professions.

One measure of the Big Six's encroachment into legal services is the rapid increase in the number of lawyers inside Big Six firms. It is difficult to empirically assess the rate of growth of lawyers within the Big Six as most firms have not consistently collected this information. Kathryn Oberly of Ernst & Young advised:

> "it is information we do not keep track of…we don't have any idea of who is admitted to practice in a US jurisdiction or who is not admitted to practice in a US jurisdiction. We probably have lots of people who have a J.D [law degree] but they're not practicing law because they are working as a consultant or something like that" (New York State Bar Association, 1999).

**Table 4.11**
**World's Largest Consulting Firms (by Revenue): 1990 to 2000**

**1990**

| Rank | Firm | Revenues (US-millions) |
|---|---|---|
| 1. | Andersen Consulting | 999 |
| 2. | Marsh & McLennan | 607 |
| 3. | Towers Perrin | 466 |
| 4. | Booz-Allen & Hamilton | 391 |
| 5. | Deloitte & Touche | 371 |
| 6. | KPMG | 360 |
| 7. | Coopers & Lybrand | 356 |
| 8. | Wyatt & Co. | 356 |
| 9. | McKinsey & Co. | 330 |
| 10. | Price Waterhouse | 282 |

**1999**

| Rank | Firm | Revenues (US-billions) |
|---|---|---|
| 1. | Andersen Consulting | 6.8 |
| 2. | PricewaterhouseCoopers | 6.0 |
| 3. | Ernst & Young | 3.8 |
| 4. | Deloitte & Touche | 3.2 |
| 5. | CSC | 3.0 |
| 6. | KPMG | 2.5 |
| 7. | McKinsey | 2.0 |
| 8. | Cap Gemini | 2.0 |
| 9. | Mercer Consulting | 1.5 |
| 10. | Arthur Andersen | 1.4 |

*Source: Consultants News (1999), "Industry Overview", Kennedy Publications, NewHampshire.*

Nevertheless, a 1997 article in the Wall Street Journal estimated that between 1990 and 1997 the number of tax lawyers on the US staff of Ernst & Young doubled from 400 to 800, that Price Waterhouse doubled the number of US lawyers on staff between 1994 and 1997 from 250 to 500 and that Arthur Andersen's US legal staff grew from 800 in 1994 to 1,000 in 1997 (Macdonald, 1997). The Dean of New York University Law School reports that in 1996 twenty percent of the school's graduates went to Big Five firms (Law Times, 1996). Commenting on the growing trend, senior vice president and general counsel at Hildebrandt Inc., David Rubenstein, observed that:

> "[T]he Big Six are recruiting at all the major law schools, and not only tax lawyers. They are telling students that if they come with them they will be doing M&A [mergers and acquisitions], litigation and other kinds of work that goes well beyond tax counselling (Rubenstein, 1997: 1)

In spite of the lack of hard data regarding the rapid growth of lawyers employed by the Big Six, the perception within the industry, as gauged by reports in legal practice journals was clearly that this was a new and unwanted intrusion by the accounting firms.[20] And perhaps more significant than the sheer number of lawyers who were moving to Big Six firms was the quality and profile of the migrating lawyers, who were attracted by both higher earnings and the opportunity to work with complex matters involving globe spanning clients.[21] As the US Vice Chairman of KPMG explained, "this is above all a race for the top talent" (Lanning, 1999: 32).

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[20] See, for example, Phillipa Cannon, *The Big Six Move In* 50 International Financial Law Review, November, 1996; David Rubenstein, *Accounting Firm Legal Practices Expand Rapidly: Europe First, then the world?* Corporate Legal Times, November, 1997; *Arthur Andersen's Trojan Horse*, Legal Business, May, 1994;

[21] A series of practitioner articles documents the movement of high quality tax lawyers, both in Canada and the US to Big Six Firms. In *Under one Roof: ABA faces arrival of Lawyer-Accountant Pairings* published in the New York Law Journal, Nov. 19, 1998, p. 5, Bruce Balestier reported the "high profile coup" last year of an accounting firm in hiring a 'noted' tax partner. In *A Special Summary and Forecast of Federal and State Tax Developments* published in the Wall Street Journal on June 18, 1997, p. A1, Tom Herman reported on the departure of a well-known law firm tax partner to an accounting firm. In *Multidisciplinary Recruiting War... The Tax Drain to Accounting Firms Intensifies* published in Of Counsel 17 p. 7 a similar incident is recounted. Finally in *Accounting Firms Hire Lawyers and other Attorneys Cry Foul* published in the Wall Street Journal, August 22, 1997 at p. B8, Elizabeth Macdonald describes a similar series of recruitments.

Tax lawyers were also threatened by the power of Big Six firms to influence key regulators in tax practice. In the US the Big Six actively lobbied the US federal government for the right to claim a limited form of solicitor client privilege in tax matters (American Bar Association, 1999b: 6). By 1997 the US Congress agreed to Section 7525 of the *Internal Revenue Restructuring and Reform Act*, which created a new category of privilege for certain communications between certified public accountants and other federally authorized tax practitioners and their clients.

The New York State Bar Association, describing the new tensions with the Big Five as a "battle", expressed concern about the use of economic power by Big Six firms to encroach on legal jurisdiction:

> "the fact is that they [Big Six] have also spent huge sums in lobbying for changes in rules that would allow them to practice law and any other profession they thought was profitable...[they] spent an eight figure dollar amount to secure their very limited tax practitioner privilege under the Internal Revenue Code. This battle was won against the active lobbying of the American Bar Association" (New York State Bar Association, 1999: 141).

In Canada, the Canadian Institute of Chartered Accountants has undertaken efforts to obtain statutory privilege for CAs but the lobbying effort has not yet been successful (Interview, Executive of Institute of Chartered Accountants of Alberta 2000). An executive of the Law Society of Alberta, while acknowledging that relations between the accounting and legal professions in the province continue to be "very good", expressed concern about the economic clout of Big Six accounting firms:

> "Our experience is that they tend to be indifferent to professional regulators such as ourselves...There is no way that a provincial professional association like ours could ever engage in a lengthy court battle with a large accounting firm. We simply could not afford it" (Interview, Executive of Law Society of Alberta 2000).

In addition to the expansion of tax services by Big Six firms, professional associations in law were also concerned about some of the consulting services offered by the Big Six. Certain consulting work, such as litigation support services, labour relations consulting and regulatory compliance advice often involves a component of giving legal advice, particularly when that advice is given by lawyers who are employees of Big Six firms. Big Six firms were now performing complex corporate transformations for their clients, including mergers and acquisitions, insolvency and labour relations matters. A newspaper advertisement that described one sixty-seven million dollar transaction, structured by lawyers in Arthur Andersen's London office in the early 1990s, according to an American Lawyer article:

> "shows just how far Andersen has moved away from bean counting: It [the advertisement] boasts that Andersen's role included managing the buyout process...advising management on...[its] business plan...[and] raising the equity, debt, and mezzanine financing. Advice like that, of course, has to be dispensed hand in hand with legal advice (*American Lawyer*, June 1998: 51)."

Each of these areas of practice has always required substantial involvement with lawyers. The change that was occurring is that the Big Six firms were providing these services 'in-house', which suggested to lawyers and law regulators that Big Six firms were engaging in the unauthorized practice of law.

Jurisdictional pressures between lawyers and the Big Six eventually resulted in allegations of unauthorized practice of law against the Big Six. In 1996 a complaint was filed with the Supreme Court of Texas by several large law firms. The complaint alleged that Arthur Andersen was practicing law illegally. The complainants argued that tax professionals in Arthur Andersen were holding themselves out to clients as lawyers and drafting legal documents on behalf of clients (Kerrigan Submission, ABA *Commission on Multidisciplinary Practice*, Atlanta, Georgia, August 8,1999: 3). The complaint was dismissed after an eleven-month investigation when the investigation committee determined that there was not sufficient evidence to proceed (Hayes, 1998). A similar complaint was filed in Texas against Deloitte Touche in 1997 (Kerrigan Submission, ABA *Commission on Multidisciplinary Practice*, Atlanta, Georgia, August 8,1999: 3). The complaint, ultimately, was resolved through mediation (State Bar of Texas, 1999). In Virginia a similar complaint was filed against Ernst & Young by two law firms. That complaint is still being investigated ( New York State Bar Association, 1999).

The increasing hostility by large law firms and professional associations against the Big Six was often expressed through the media and in public statements. A former ABA president, for example, in commenting on the investigations in Texas, proclaimed "its only recently that lawyers have woken up to the fact that [accountants] are out there eating their lunch" (Public Accounting Report, 1997). Prominent legal services consultant, Ward Bower warned Canadian lawyers, "[Big Six] accountants are a significant threat. They are out to conquer the world" (Middlemiss, 1998: 14).

### A Big Six Model of MDP begins to take shape

Against this backdrop of increasing encroachment on lawyers' jurisdiction by Big Six firms in North America, a distinct form of multidisciplinary practice, which included law, was taking shape within the European branches of Big Six firms. Much of the initial activity occurred in France. A quirk of the *New Reform Act* of 1992, which merged two branches of legal service providers[22] into one, had the effect of transforming non-lawyers employed by accounting firms into *avocats* or lawyers entitled to appear in French Courts. Accounting firms in France, including branches of Big Six firms, found that they now employed lawyers, fully qualified to practice law before the French courts. The accounting firms quickly took advantage of this by establishing law firms. Within a few years Big Six law firms were among the largest in France (Carr, 1993). By 1997 Big Six firms became the dominant players in the European legal marketplace (Nicolay Submission, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., November 12, 1998).

The model of MDP promoted by the Big Six in Europe has been described as a 'captive' law firm. Although the phrase 'captive law firm' has been used to describe a broad range of degrees of integration between subsidiary law firms and parent accounting firms, the term carries a common connotation. Foremost, the parent accounting firm offers a host of services including a broad range of tax, audit and management advisory services. Legal services form a small component of this conglomerate of professional services. The captive law firm remains technically independent from the parent Big Six firm. The law firm relies heavily (almost exclusively) on the parent firm for clients, often occupies space in a building owned by the parent, shares the name of the parent in soliciting clients and pays 'management fees' to the parent for overhead, staff and [illegible]ed support services.

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[22] The branches merged were the French equivalent of barristers, or lawyers engaged primarily in courtroom litigation, and solicitors, or lawyers engaged primarily in contract negotiation and interpretation.

The captive model of MDP represents an intermediate stage between two extreme positions in the MDP debate. Proponents of MDPs, such as the Big Six, sought full integration between disciplines in professional service firms. Opponents of MDPs argued for discrete, organizational boundaries between professions. Between these two opposing views, there existed a broad range of alternatives. Some, such as the Canadian Institute of Chartered Accountants and the American Institute of Certified Public Accountants, promoted a model of MDPs that were dominated by accountants; that is, a firm in which accountants formed the majority of partners (Glover Interview, 2000). Others, such as the Working Group of the Law Society of Upper Canada, advocated a model of MDP where lawyers formed the majority of partners (Law Society of Upper Canada, 1998).

The Big Six 'captive firm' offered a compromise between the two extreme positions. While not technically violating existing professional regulations in Europe (or North America), it provided a practical means of offering 'one-stop-shopping' for professional services for their clients. The captive firm, thus, offered a 'hybrid' structure in response to conflicts between two institutional environments (D'Aunno, Sutton and Price, 1991).

The model of MDP that was being put in place in Europe, however, differed from the models promoted by professional associations in law and accounting in North America in one important respect. The MDP models being discussed by professional regulators assumed that professionals, from one or more of the state sanctioned traditional professions, would be the *only* partners of such firms and that MDPs, therefore, would still be governed by some form of professional regulation. The Big Six, by contrast, were intent on including non-professionals, particularly management consultants in the equity structure of their firms. As this excerpt from a commission of inquiry into MDPs by the New York State Bar Association observed:

> "the phrase represented by the letters MDP suggests [to lawyers] professionals from different professions, working closely together, each guided by his or her own acknowledged and enforceable codes of conduct…not the virtually unregulated services proposed by the [Big Six]…[t]hese erstwhile accounting firms are now giant business conglomerates than manage and market multiple product lines, employ tens of thousands of employees in scores of countries and each realizes annual sales in the billions of dollars" (New York State Bar Association, 1999: 53).

The quote reveals a fundamental concern of professional regulators, both in law and accounting, regarding MDPs. Their concern is less with the possibility of MDPs, or even with which profession might come to dominate them. Rather, professional regulators were concerned with the notion that MDPs might be owned by individuals who were outside their power of governance and that professional services might be delivered outside their regulatory scope.

### Lawyers revisit the MDP debate

Between 1990 and 1997 several bar associations in Canada and the US revisited the issue of MDPs in law. Most of these inquiries ignored the potential jurisdictional threat of accounting firms and their growing interests in law. Most of the inquiries also displayed a generally favourable attitude toward MDPs. A 1994 report on MDPs from the Law Society of British Columbia, for example, observed:

> "There is an increasing interest…in lawyers being permitted to establish interdisciplinary partnerships with accountants, notaries, appraisers, trustees, investment counsellors, architects and engineers…[such interest is the result of] the loss of a great deal of work to other professionals such as accountants, notaries and trust officers" (*Gazette*, 1994: 12).

In Ontario, the initial attitude amongst lawyers toward partnering with other professionals was generally positive. A survey conducted by the Law Society of Upper Canada's research and policy unit in 1996 demonstrated growing interest within the profession in multidisciplinary partnerships (Law Society of Upper Canada, 1998). More than a third of the firms surveyed were in favour of solicitors forming partnerships with other professions. Just over half of the membership supported MDPs with the further requirement that lawyers retain "effective control" of the firm. Small firm practitioners (i.e., firms with less than five partners) were most supportive of MDPs and large firm practitioners (i.e., firms with more than fifty partners) were the least supportive.

In 1994 the Law Society of Alberta noted a growing problem of lawyers establishing ancillary businesses. In the course of an inquiry, the Society observed "an obvious interest by our members to enter into partnership with other professionals (Interview, Executive Law Society of Alberta 2000)." The suggestion was passed along to the National Federation of Law Societies and, the following year, the Law Society of Alberta had established a committee to study the possibility of permitting MDPs in Alberta.

The initial attitude toward MDPs amongst committee members was quite open. This open attitude, however, was predicated on the assumption that multidisciplinary practices would consist of a relatively equal participation of professions. However their investigation of MDPs in Europe quickly made law society representatives aware of the potential competitive threat of Big Six firms:

> "Our initial attitude was open to the concept [of MDPs] but this was based on the relatively simplistic view of small law firms entering into partnerships with psychologists, engineers and the like on a, you know, equal footing. When we observed what was happening in Europe, it uh became obvious what might happen here…the accountants would take over all the top commercial work…" (Interview, Staff Lawyer, Law Society of Alberta 2000).

Members of the committees investigating MDPs were also made aware of the advances that Big Six firms had already made in becoming multidisciplinary and adopted the view that the Big Six model of MDPs, with law as a small subsidiary of a conglomeration of professional services, would inevitably arrive in

North America and, rather than waste effort in trying to stop it, should devote their efforts to shaping the ultimate organizational form by taking immediate steps to regulate MDPs. The establishment of a captive law firm in Canada, to be detailed in the next section, confirmed this assumption.

### Stage Two: Analytic Summary

The events of this stage suggest that North American lawyers, generally, and professional associations in law, specifically, severely underestimated the competitive threat from Big Six accounting firms through MDPs. Lawyers, particularly in the US, seem to have acknowledged the threat from Big Six firms in the provision of tax services. The tensions that developed between professions, however, seemed confined to a fairly narrow range of issues relating to the boundary between accounting and law with regard to privilege and client representation in tax matters. Moreover, the conflict also seemed to be confined, by geography (to three US jurisdictions) and by actors (between a few large law firms and the Big Six).

Lawyers, moreover, initially seemed to be very receptive to the notion of MDPs. Law societies in Ontario, British Columbia and Alberta acknowledged a growing interest in MDPs amongst members. Ontario surveys suggest this interest was strongest amongst small firms of five lawyers or less. The potential threat of domination by Big Six firms, appears to have arisen, only as a result of investigations into MDP activities in Europe by professional regulators.

This stage also demonstrates marked differences in the assumptions about appropriate organizational form for MDPs between professional associations and the Big Six. The discussions about multidisciplinary partnerships amongst lawyers assumed that these new organizational forms would conform with the characteristics of traditional professional firms. That is, that they would consist, primarily of small firms composed entirely of professionals from other state-sanctioned professions (that is, professions recognized by state regulation). The Big Six version of MDPs was quite different. It involved both state-sanctioned and unregulated professionals. This raised the possibility, amongst professional associations in law, of further dilution of professional controls.

Finally, the 'captive firm' used by the Big Six to provide legal services in North America demonstrates the emergence of two parallel governance systems in the organizational field. The captive firm is a hybrid organizational structure designed to comply with both the professional controls of law while still fulfilling the needs of the emerging consumer-driven controls of professional business services. Meyer and Rowan (1977) acknowledge that institutional environments are often "pluralistic" and promote inconsistent or even conflicting isomorphic pressures. The captive firm represents an effort by the Big Six to respond to "multiple and often uncoordinated sources of legitimacy (D'Aunno et al, 1991). Within the context of the legal profession, the dominant organizational model was that law firms are independent from other organizations and owned by lawyers. Within the context of professional business services, law was an additional service demanded by consumers of a broad spectrum of corporate services in a quest for efficiency. The captive firm provided minimalist conformity to professional governance, as well as pragmatic conformity to market controls.

### Period Three: Professions and the State Draw a Line in the Sand-1997 to 2000

Between 1997 and 2000 the debate about MDPs amongst lawyers changed from questioning whether MDPs were appropriate for the profession to a focus on how to best contain the competitive encroachment of Big Five firms. In 1998 the Big Six would become the Big Five with a merger between Price Waterhouse and Coopers & Lybrand to create PricewaterhouseCoopers. The Big Five intensified their encroachment in North American law, most dramatically, with the establishment of a captive law firm in Canada, similar to those existing in Europe. North American lawyers reacted with a flurry of studies and commissions designed to contain the breach of their jurisdiction. More significantly, state agents, in the form of capital market regulators, entered the debate by criticizing the efforts of the Big Five to expand services into consulting and law and, ultimately, by setting out rules that severely limit the Big Five model of conglomerate professional services.

The period is bracketed by two significant events. The first was the emergence of North America's first 'captive' law firm in 1997 and the reaction it generated in the legal profession. The period concludes with the emphatic entry of the government into the MDP debate with a strategy of de-legitimation of the Big Five's migration into non-audit services.

### Ernst & Young establishes a law firm in Canada

In early 1997 Ernst & Young announced that it had established Donahue & Associates as the first 'captive' law firm in North America. The 'capture' of a former twelve lawyer corporate commercial firm in Toronto, Canada marked an aggressive first step by a Big Six firm to establish an MDP in North America. Soon after the announcement, Donahue & Associates recruited prominent lawyers such as Stewart Ash, a corporate lawyer from Fraser & Beatty, Norm Couzin, a tax lawyer from Stikeman Elliott and John Black, a prominent corporate lawyer from Bennett Jones.

The announcements created a sense of urgency and panic in the Canadian legal community. Articles appeared in practitioner oriented law journals suggesting that the Big Six would quickly dominate the lucrative market for corporate commercial law in Canada.[23] Jim Middlemiss, in an article published both in the *Canadian Lawyer* and *National*, the Journal of the Canadian Bar Association warned that the Big Six were economic powerhouses with the ability to dominate the market for commercial law:

> "Given the size and reach into the global corporate world through their audit, tax and business consultancy service, the Big Six represent the "Big Box" retailers of the professional world, a Wal-Mart, if you will, waiting to quash the small independents" (Middlemiss, 1997: 14).

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[23] See, for example, J. Middlemiss. "The Writing on the Wall", National-Journal of the Canadian Bar Association. February, 1997: p. 14-16; L. Smith, "One Stop Shopping to the Nth Degree." Of Counsel, July 7, 1997, 16(12).

A similar article, in *Of Counsel*, the journal of the American Corporate Counsel Association observed that the Donahue announcement was "a relatively small step" that would bring "the competitive storm raging in Europe right to the doorsteps of American law firms" (Smith, 1997: 1). The article outlined why Big Six firms offered such formidable competition for North American lawyers:

> "The [Big Six] firms feature full-service, multidisciplinary practice teams that, with the combined expertise of their accountants, consultants and lawyers, mean some clients need look no further than to one global supplier for structuring transactions…For law firms, its not just another competitor with a full service agenda; its also a competitor who can undersell them, who can marshal seemingly endless information technology resources, who can generate in-depth client-customized products, and, perhaps, most unsettling, who can demonstrate truly superior marketing and cross-selling skills" (Smith, 1997: 1).

The article concluded with the observation that the Donahue firm represented a 'test-case' for the entire continent.

The reaction by legal professional associations in North America was swift. Law Societies in nearly every jurisdiction in Canada and the US initiated inquiries and established committees devoted to MDPs. This contrasts sharply with the position before 1997 when only two professional associations in Canada, Alberta and Quebec, had committees devoted to studying MDPs. Within twelve months of the Donahue-Ernst & Young announcement, all western provinces, Ontario and Nova Scotia had established committees as had the Federation of Law Societies of Canada and the Canadian Bar Association. The same reactive pattern occurred in the United States. Prior to 1997, only New York State had a committee devoted to studying the issue, but by 1998 every state and local bar association (except Alaska and Hawaii) as well as the American Bar Association had committees or task forces devoted to MDPs. The following section provides an in-depth discussion of the terms of inquiry of five MDP committees in Canada (Ontario, Quebec, B.C, Alberta and the Canadian Bar Association) and that of the American Bar Association in the US.

## Professions React to Donahue/Ernst & Young

*Ontario:* On April 2, 1997 the Law Society of Upper Canada (Ontario) commissioned Kent Roach of the University of Toronto Law School to prepare a report on the appropriate "regulatory response" to the emergence of MDPs in Ontario. The terms of reference of the working committee were quite broadly stated:

> "a broad focus on the implications of an MDP structure for the practice of law and in particular the regulatory issues it raises. From that flowed the following key issues:
>
> - how the development of MDPs impacts on the unique role of the legal profession in society;
> - the issue of inevitability of MDPs;
> - whether the development is in the public interest;
> - the nature of the profession's regulatory response, if any, to MDPs" (Law Society of Upper Canada, 1998b).

Despite the broad scope of the original mandate, however, the authors contracted by the working group to conduct a three phase study of MDPs acknowledged, in their phase one report, that the issue was being 'driven' by the actions of the Big Six:

> "It is safe to assume that multidisciplinary practices of some form are coming and in some cases have already arrived. The Big 6 accounting firms are offering one stop shopping for a broad range of professional services and are hiring more lawyers. They wish to provide legal services to their clients. In England and Canada they have established captive law firms that are aligned to their practice, but have separate names and partnerships. Large multi-national corporations may be attracted to one stop shopping and the consistency of services offered by large organizations. Multidisciplinary services may also eventually be supplied to smaller corporations and individuals...The immediate question is how legal regulators should respond" (Roach and Iacobucci, 1998: pp. 1-2).

On April 4 1997, the Society formed a working group, the "Futures Task Force", to study MDPs.[24] The Working Group undertook a large-scale inquiry of members' attitudes toward MDPs. All of the members of the Ontario bar were surveyed. A third (9600) responded. The survey showed that a third of the respondents already participated in some form of *de facto* multidisciplinary arrangement, either through an exclusive referral agreement or strategic relationship with another professional firm. Accountants and engineers were the most common profession to partner with. The Working Group reported that "the activity crossed solicitors and barristers work and there was only slight variation in statistics for the various practice categories (i.e., sole practitioner, small, intermediate and large firms)" (Law Society of Upper Canada, 1998b: Appendix 10).

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[24] The "Working Group" consisted of David W. Scott, Q.C. and Robert P. Armstrong, Q.C. as Co-Chairs. J. Rob Collins, a non-Bencher member, Marshall A. Crowe, Heather J. Ross, Malcolm Heins and Jim Varro, a staff lawyer for the Society. The Working Group contracted with Kent Roach, Dean of Law of the

The Working Group also conducted focus group meetings with lawyers in practice. A total of nine discussion sessions were held in November and December, 1997 in Toronto, Ottawa and London, Ontario. Thirty-one lawyers from a mix of large and small firms attended the sessions. One session was held specifically for lawyers employed in large accounting firms or their management consulting practices. The Working Group concluded that the sessions provided additional evidence that *de facto* multidisciplinary arrangements between lawyers and other professionals were

> "essential and very far advanced. The status quo MDP activities include actuarial firms which are an example of MDPs that exist in substance, rather than in form. They provide good service to clients at a reasonable cost, avoiding the expense of involving an outside firm of lawyers and duplication of work and communication issues. Patent and trade mark agents are another example. They share referrals and the economic success of affiliation" (Law Society of Upper Canada, 1998b: Appendix 9).

The Working Group further observed general support for MDPs by both large and small firms. With respect to smaller firms, they reported that small firms had already made substantial advances in forming MDP-like relationships. For large firms, the Group concluded that

> "there is a tremendous capital and economic base that the accounting firms could bring to the practice of law through MDPs, given the worldwide presence of accounting firms, and the tremendous competitive force they create. In this sense, if there is a world wide competition and lawyers are

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University of Saskatchewan College of Law and Edward Iacobucci, Professor of Law, University of Toronto Faculty of Law, to conduct a three phase study of the issue of MDP regulation.

> not involved in MDPs, it means they cannot compete in a world market. While an independent, ethical profession is necessary, and this is the other side of the competition question, the question is what type of profession will remain if the number of lawyers becomes insignificant *because* of competition" (Law Society of Upper Canada, 1998b: Appendix 9).

In March 1998 the Working Group invited chartered accounting representatives from the large accounting firms, and their in-house counsel to attend a focus group discussion. Two sessions were held at which a total of nine Big Five partners and in house counsel discussed attitudes toward MDPs. The Working Group concluded from these discussions that the Big Five were "forced to consider MDPs just to stay competitive" (Law Society of Upper Canada, 1998b: Appendix 9). MDPs, according to the accountants, were a function of the marketplace and the professional regulatory infrastructure, both in accounting and law, would be forced to catch up with the realities of the marketplace. They acknowledged that regulation and the protection of ethical issues such as conflicts of interest and privilege were critical, but that these issues were capable of resolution through the co-operation of professional regulators in law and accounting.

In April 1998, the Working Group met with representatives from the Institute of Chartered Accountants of Ontario. The two representatives to attend were former members of the *Inter-provincial Task Force on the Multidisciplinary Activities of Members Engaged in Public Practice*. From that meeting, the Working Group concluded that, as early as 1995 the Institute of Chartered Accountants of Ontario were aware that the accounting profession had *de facto* MDPs well in advance of any professional regulatory authority:

> "there are non-CAs who are essentially partners, but the firms are structured so that there are CAs in one partnership, and non-CAs in a sister partnership" (Law Society of Upper Canada, 1998b: Appendix 9).

The accountants suggested that legislation regarding MDPs was under consideration, but wasn't considered a priority because, to date, accountants still form the dominant majority of *de facto* MDPs. They acknowledged, however, that the regulations would likely stipulate some form of control by accountants.

A final series of consultations with lawyers in Ontario was conducted in March, 1998 with a total of fifteen lawyers, chosen by the Working Group, representing a cross section of practice disciplines and firm sizes. The Working Group reported that most lawyers thought some alliance with other professionals was "not only inevitable, but traditional and desirable in that clients achieved the best results if professionals worked together closely and in cooperation" (Law Society of Upper Canada, Report to Convocation, September 25, 1998: Appendix 9). The discussion focused on a distinction between multi-disciplinary "practice" and "partnership". Although there was no consensus on partnerships as an appropriate practice structure, there was a growing awareness that there were other ways to engage in revenue sharing between professionals and sharing management power short of partnerships. Large firm lawyers in the business law areas acknowledged the effect of globalization of services and how trans-national corporate clients seek centralized services in a small number of global markets.

In its final report, on September 25, 1998, the Working Group acknowledged a degree of inevitability regarding MDPs and recommended permitting lawyers to form multidisciplinary partnerships only if lawyers constitute a majority of partners and if the firm engages primarily in the practice of law. This regulatory form was similar to the model used by the District of Columbia and has since been termed the "control" model. Although it is not obvious in the final report, the Working Group was clearly influenced by the intention of chartered accountants in Ontario to use a reciprocal regulatory model but with accountants in control of MDPs (Varro Interview, 2000). The final report took specific aim at the issue of Ernst & Young's captive law firm, acknowledging that the report did not provide any evaluation of the propriety of such an organizational structure, but that it would be the subject of a separate investigation:

> "The practice model currently in vogue which is closest to an MDP in its structure is the 'captive' law firm referred to earlier in this Report. It is an undertaking said to meet the dictates of the existing regulatory framework. The Working Group's study has led us to conclude that there are

> regulatory issues which require independent study with respect to this model, including questions of control, trading style, management of conflicts of interest and related matters. It is recommended that an appropriate vehicle be struck to undertake this study. Cooperation from the profession, including those involved in such enterprises who were particularly helpful to the Working Group in our deliberations, can be expected" (Law Society of Upper Canada, 1998b: 148).

Although a committee had been struck to conduct the investigation, it has not yet reported to the Law Society of Upper Canada.

*Federation of Law Societies:* In the fall of 1997 the Federation of Law Societies of Canada (FLSC) canvassed all law societies across the country to determine which societies were currently studying the desirability of MDPs as well as to seek an opinion on the need to form a body to study the issue. At the behest of those jurisdictions already studying MDPs the FLSC established a *National Multidisciplinary Partnership Committee* in February of 1998. V. Randell J. Earl, Q.C., of St. John's Newfoundland chaired the committee. Each provincial and territorial law society appointed a delegate to serve on the committee. Keith Hamilton of the Law Society of British Columbia prepared the initial committee report, which focused on identifying governance issues.

The early mandate of the committee was to "identify practical solutions to the obvious obstacles to multi-disciplinary partnerships and identify working models which law societies could consider in addressing the implementation of a model of multi-disciplinary partnerships within the jurisdictions" (Federation of Law Societies of Canada, May 1999: 1). This relatively broad statement of purpose, however, was contradicted by public statements by the Chair (cited in Middlemiss, December, 1999) and restated in the committee's final report (Federation of Law Societies of Canada, August, 1999: 1) that called for "a national approach to regulate MDPs" that "protects the public interest and *safeguards our profession's competitive advantage*". The final report concluded that "it would be feasible to develop a regulatory scheme permitting a lawyer to deliver legal services to the public through an MDP" (Federation of Law Societies of Canada, August, 1999). The *Committee Report* advocated rules that would permit profit-sharing with non-lawyers on condition the lawyers involved satisfy their law societies that the MDP had implemented measures preserving the profession's core values. Those core values include confidentiality, privilege, conflicts of interest, independence, liability insurance, trust accounting standards and professional obligations.

*Quebec*: In October of 1997 the Barreau du Quebec established a new sub-committee of the *Future of the Profession Task Force* with a specific mandate to conceive of a strategic plan for the implementation of MDPs in the legal profession:

> "Based on previous interventions made by the Barreau du Quebec on the issue of multi-disciplinarity, the Committee concluded that the Barreau is in favour of multidisciplinary partnerships between lawyers and other professionals, including accountants, subject to proper monitoring in order to uphold the profession's integrity and protect the public. Moreover the Committee has conducted a study to look into the multi-disciplinary services market in Quebec. Based on the study's results, multi-disciplinary partnerships represent a strong trend set to become one of the market's requirements" (Report of the Barreau du Quebec, 1999: 2).

Again, the open mandate and positive endorsement of MDPs at the onset of the report do not adequately demonstrate the degree to which the Committee's existence was driven by the actions of Big Five accounting firms. The executive summary, however, acknowledged the degree to which their efforts represented a response to the Big Five:

> "All over the world, major accounting firms are taking an increasingly prominent role in the legal services market. Accountants still consider audit services to be the cornerstone of their profession's practice, but not a source of growth. They already have a strong foothold in the taxation sector and have developed other services...the legal services market seems to generate interest among large accounting firms. Throughout the world, they control major law firms, as in Switzerland, France and England. Closer to home, a Toronto law office is a member of the Ernst & Young International accounting firm, although it remains a separate corporate entity. Furthermore, there is reason to believe that "agreements" have been reached in Quebec between lawyers and accountants to bypass fee sharing prohibitions which the Barreau cannot control" (Barreau du Quebec, 1999: 2-3).

The Barreau's ultimate agreement to permit MDPs was described by observers in the Canadian Lawyer as a 'pre-emptive strike' to occupy the legislative field before MDPs became an unregulated phenomenon (Middlemiss, 1999).

The Committee recommended a 'contract' model of regulation in which non-lawyer members of MDPs would agree, contractually, to comply with lawyers' professional conduct rules and respect the lawyers' independence in their relations with clients, with ultimate recourse to the Barreau in case of violation. In addition, multi-disciplinary partnership agreements between lawyers and accountants would need to include a mandatory content, as determined by the Barreau, regarding conflicts of interest, professional privilege and independence of the profession. Finally, the Committee recommended that the Barreau develop monitoring parameters for MDPs, and "more specifically between lawyers and accountants" (Barreau du Quebec, 1999: 4).

*Canadian Bar Association:* The Canadian Bar Association also initiated a committee devoted to MDPs. In the autumn of 1997 the *International Practice of Law* committee was established. Chaired by Thomas G. Heitzman of McCarthy Tetrault, the Committee also included Christiane Alary of deGrandpere Chait (Montreal), James M. Klotz of Klotz and Associates (Toronto), Simon V. Potter of Ogilvy Renault (Montreal) and T. Bradbrooke Smith of Stikeman Elliott (Ottawa). The initial mandate of the Committee was quite broad and included the role of monitoring the "globalization of legal practice and the trend towards multi-disciplinary practices through NAFTA, the World Trade Organization and the International Bar Asociation" (Canadian Bar Association, October 1997). Despite the broad mandate, the Committee's reports came to focus directly on accountants because "they have become the driving force behind MDPs" (Canadian Bar Association, October 1997: 9). In October of 1997 they produced a report entitled *Emerging Issues for the Legal Profession: Multidisciplinary Practices*. The report condemned MDPs as a violation of the core values of the legal profession. At the CBA's annual meeting, in August, 1997, then-CBA president, Russel Lusk called on lawyers to "counterattack Big Six accountants who were trespassing on their professional turf (Billington interview, 2000;

Melnitzer, 1999). An interim report, produced in the summer of 1998, again rejected MDPs, and stated:

> "MDPs should not be permitted to provide legal services to clients if the MDP is not controlled by lawyers" (Canadian Bar Association, 1998: 1).

In August, 1999 the CBA Committee released its final report, *Striking a Balance: Multidisciplinary Practices and the Legal Profession.* The report endorsed MDPs and avoided the restrictive "control" and "contract" models of Ontario and Quebec. The report also targeted large accounting firms by making it clear that MDPs would not be permitted when legal services are intermingled with audit services. Commenting to the *National* after releasing the report, Chair Thomas Heintzman said:

> " 'Its important that [people understand what our report is about and what its not...'What the CBA report is not about, says Heintzman, is opening the doors to unfettered mingling between lawyers and other professionals. 'Our report says that the law society is obliged to ensure that conflicting professions do not practice together', he explains. There's little room for auditors and lawyers to work under the same roof, he adds" (Middlemiss, 1999: 27-28).

The CBA Committee thus recommended that there be no restrictions on the number of lawyer-partners in MDPs, nor should there be any restriction on the type of services the firm provides. Rather, the Committee suggested individual lawyers remain subject to the regulations of their professional body and ensure that their activities, within the MDP, do not violate the core values of the profession.

CBA members did not uniformly accept the recommendations of the Report. The Chair of Committee, Thomas Heintzman, dissented with the majority of the committee on the issue of whether law societies should license only individuals and not MDP firms (Interview, Staff Lawyer, Law Society of Alberta 2000). At the 1999 annual meeting, David Ward of the Toronto firm of Davies, Ward and Beck, attacked the Report alleging that it opened the door for Big Five firms to take the top corporate commercial work from law firms (Interview, Staff Lawyer, Law Society of Alberta 2000).

Representatives of the Law Society of Upper Canada also condemned the report. Society Treasurer and Tory, Tory partner Bob Armstrong criticized the CBA recommendations as inadequate to contain the domination of lawyers' professional values in a Big Five MDP:

> "[Armstrong] maintains it is 'incredibly naïve' to think the 'core values can be protected simply by having law societies across Canada regulate the lawyers within MDPs.' Armstrong notes that the Big Five consulting firms, which are leading the charge, have hundreds of thousands of employees worldwide. 'Its naïve to think that [a law society] could effectively regulate those lawyers" (Middlemiss, 1999: 29).

The range of opinions on the MDP issue within the Canadian Bar Association, according to Professor Kent Roach in speaking at the National Multi-Disciplinary Partnerships Committee in Montreal, could be explained by a simple observation:

> "There are two different phenomena with respect to MDPs; The Big Five version of MDPs and MDPs where lawyers and non-lawyers are in partnership" (Canadian Bar Association, Transcripts, 1999)

Roach suggested that lawyers are open to the notion of multi-disciplinary partnerships on an "even playing field" but tend to reject them when confronted with the competitive threat of the Big Five. Depending upon the context, MDPs represent both a threat and an opportunity (Canadian Bar Association, Transcripts, 1999).

*Alberta:* The Law Society of Alberta established *The Ancillary Business and Multi-Disciplinary Practice Committee* in 1997. Patricia Rowbotham from the University of Calgary first chaired the Committee. Other members included Gordon Flynn (Edmonton), Barbara Snowdon (Calgary), Susan Billington (Law Society staff lawyer), Corinne Peterson (Edmonton), William H. Smith (Calgary) and Elwood Johnson (Lay Bencher). The initial mandate of the committee was to monitor activities in other law societies and at the national and international levels and to keep the Benchers of the Society abreast of issues.

The Committee made a series of presentations to the Benchers of the Law Society, beginning in 1998. When the issue was first presented, many of the

Benchers expressed scepticism about the urgency of the issue. In the discussion following the Committee's presentation one Bencher observed:

> "I just don't see the urgency. Is this a burning thing based on only one firm, Ernst & Young...I don't see the 'burning issue'. Although there may be efficiencies to be achieved in organizing practice this way, I think the conflict dangers are too important. I don't want to compromise the core values of the profession for the sake of one accounting firm. I think we should take an *ad hoc* approach until this thing blows up in the face of the accounting firms...it's a passing fad" (Author's notes, Benchers meeting, February, 1998).

Throughout the balance of this period, the MDP committee made a series of presentations to the Benchers but failed to convince Benchers of the need for any action beyond monitoring events in other jurisdictions and at the national level.

*American Bar Association:* The American Bar Association appointed a *Commission on Multidisciplinary Practice* in August, 1998. Chaired by Sherwin P. Simmons, a partner and chair of the tax department of the Miami, Florida firm of Steel, Hector and Davis, the Commission was composed of eleven other members; two judges, three academic lawyers, two general counsel (for Netscape Communications and Salomon Smith Barney), and four partners in large law firms from New York, Chicago, San Francisco and Minneapolis. The press release announcing the Commission demonstrates both how quickly the issue of MDPs became a priority for the American Bar Association and the degree to which the commission was a reaction to the actions of the Big Five:

> "Toronto, August 4, 1998: The incoming president of the American Bar Association, Philip S. Anderson, today announced appointment of a Commission on Multidisciplinary Practice to examine such trends as international accounting firms purchasing law firms.
> "Since the early 1990s, the Big Five accounting firms have been acquiring law firms in Europe, and have added legal services to their list of client offerings. In the US, accounting firms are recruiting partners from leading law firms to work on complex corporate issues for accounting firm clients," said Anderson, of Little Rock, Ark.
>
> "These developments raise new issues for lawyers and their clients," said Anderson.

> "This commission has a mandate to look at these issues from the standpoint of the public's best interests. While all lawyers are required to place their clients' interests above their own, this commission must set aside the financial interests of the profession and ensure that the public interest is served." (American Bar Association, Press Release, August 4, 1998).

In contrast to the relatively private hearings conducted by the *Kutak* inquiry, the Simmons Commission took the unusual step of making the hearings accessible to the widest possible audience, and extended an invitation to "the public, members of the House of Delegates, ABA entities, and all other interested persons and organizations" to appear and provide evidence (ABA website: http://www.aba.net.org., August, 1998). Over the next year the Commission heard direct testimony from scores of witnesses from around the world, reviewed thousands of pages of written testimony and generated an interim and final report.

In a summary report, the Commission stated that evidence presented to them suggested strong demand for the delivery of legal services in the context of multidisciplinary organizations. The Commission concluded that "such a change was in the best interests of the public, would expand the availability of legal services and would facilitate the development of a new business structure enabling lawyers to reconfigure their practices to assist clients in resolving multidisciplinary problems" (American Bar Association, 1999c).

The Commission presented a recommendation that lawyers be permitted to engage in fully integrated MDPs. That is, the Commission rejected the "control" model adopted by Ontario and the "contract" model adopted by Quebec as placing too many restrictions on consumer choice and on opportunities by lawyers. The Commission's recommendations, however, carefully placed controls on mixing audit and legal services in a single MDP. The Report specifically acknowledged the incompatibility of legal services and audit services for publicly traded corporations. Citing a letter submitted to the commission by the SEC in January 1999, the *Report* stated:

> "In a letter from the Office of the Chief Accountant (OCA) of the Securities and Exchange Commission (SEC), this Commission was

> advised that the SEC has asked the Independence and Standards Board (ISB) to place the topic of legal advisory services on its agenda. The SEC intends to look to the ISB for leadership in establishing auditor independence regulations applicable to the audits of the financial statements of SEC registrants. According to the letter, the SEC auditor independence regulations specifically state that the roles of auditors and attorneys under federal securities laws are incompatible. The OCA would consider an auditing firms independence from an SEC registrant to be impaired if that firm also provides legal advice to the registrant or its affiliates" (American Bar Association1999c: 7).

The recommendation was criticized by representatives of PricewaterhouseCoopers as allowing MDPs for everyone but the Big Five (DiPiazza Testimony, ABA *Commission on Multidisciplinary Practice,* Washington, D.C., March 11, 1999). The American Institute of Certified Public Accountants (AICPA), also observed that this ruling would effectively shut the door to fully integrated MDPs by the Big Five. The *CPA Journal,* commenting on the recommendation, observed "this is an important issue for larger accounting firms because restricting their ability to deliver legal services to audit clients substantially limits the growth potential of MDPs" (Baker, Hanson and Smith, 2000: 17).

When the recommendations were presented at the annual meeting of the ABA's *House of Delegates* on August 10, 1999 they were fiercely opposed by state and local bar associations. Particularly vocal in their opposition, were those state bar associations from Florida, Texas, New York State and Michigan (ABA Journal, September, 1999) who argued that the Commission had not adequately demonstrated that MDPs were in the public interest nor had they proven that the recommended rules would protect the core values of the profession. The House agreed to defer the vote until next year's annual meeting and continue to investigate the issue.

A large part of the opposition related to the concern, expressed by some members, that the controls were still not sufficient to contain the multidisciplinary activities of the Big Five. The fear was that, given the size of these firms, lawyers would be 'swallowed up' in a large, complex organization and, as a result, lose control over their work and their core professional values. The testimony of Laurel Terry, a professor at the Penn State School of Law, is illustrative. Although she gave tentative support for a fully integrated model of MDP, she expressed concern about allowing lawyers to participate in MDPs where they were a minority:

> "Although the point was not explicitly framed in this manner, I think many witnesses share the view that *relative size* is dangerous and that if a lawyer is only a small part of a large organization and the lawyer is not in control, then pressures will be placed on the lawyer and that we cannot expect or rely on an individual lawyer to resist such pressures" (Laurel Terry Testimony, ABA *Commission on Multidisciplinary Practice,* Washington, D.C., March 12, 1999: 5).

Although the concerns were rarely directly expressed as an issue relating specifically to the Big Five, concerns about control and relative size became a code word for opposition to the Big Five's expansion into legal services.

Some of those providing testimony to the Commission, however, bluntly identified the Big Five as the source of their opposition to MDPs. In his testimony, Bernard Wolfman, professor of law at Harvard University voiced the concerns of some Commission members:

> "Some Commission members are affected by the fact that the Big Five already have thousands of lawyers as partners and employees, that they are probably violating the law and their lawyers are thumbing their noses at the applicable ethical standards, but that since nobody is policing, and the Commission is not a policeman, the only thing left to do is to legitimate what the Big Five have done by strong arm, through the dint of their power and wealth. I believe, however, that the states have heard the alarm. Some are already gearing up for enforcement and they should be allowed to do their job while the Commission does its work with regard to appropriate standards. Moreover, if the Big Five are in violation of law, as former ABA President Jerome Shestack said to the House of Delegates last August, it does not follow that we should be 'complicit' " (Wolfman Testimony, ABA *Commission on Multidisciplinary Practice*, New York, February 12, 2000: 4).

In March, 2000, the ABA Commission presented a new recommendation that would authorize lawyers to practice in MDPs as follows:

> "1. Lawyers should be permitted to share fees with non-lawyer professionals in a practice that delivers both legal and non-legal

> professional services (multidisciplinary practices) provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services." (American Bar Association, March 2000: 1).

Under pressure from those Delegates concerned about the Big Five, the Commission had backtracked on their original rejection of the 'control' or 'contract' models adopted in Ontario and Quebec and were now recommending a form of 'control' model to its members.

**Big Five ignore professional regulators**

The targets of all this activity, the Big Five, presented an initial front of indifference to professional regulators. The Law Society of Upper Canada's *Committee on Multidisciplinary Practice* invited representatives of the Big Six to explain their motives and counter objections by lawyers to their version of accountant-led MDPs in early 1997. Representatives of the Big Five, however, declined the initial invitation (Law Society of Upper Canada, 1998b). In August of 1999 the Big Five issued a report prepared by Michael Trebilcock of the University of Toronto and Lilla Csorgo of Charles River Associates (the "*Trebilcock Report*") that justified fully integrated MDPs on the basis of enhanced consumer welfare.

The Big Five also resisted invitations to meet with US professional associations discussing MDPs. The New York State Bar Association's *Committee on the Law Governing Firm Structure and Operation*, for example, described their snub by Big Five firms as follows:

> "at the beginning of this work, the chair of the Committee sent a personal letter in September 1999 to the chief executive of each of the Big Five firms. The letter requested assistance in assembling data relative to the number of lawyers (both partners and employees) in each firm, how the number of lawyers had changed from 1995 to 1999 and whether the lawyers were or were not admitted to practice in a US jurisdiction. No written acknowledgement of the letters was received from any of the Big Five firms (New York State Bar Association, 2000)."

Eventually four of the Big Five would offer testimony before the ABA Commission on Multidisciplinary Practice. Kathryn Oberly, General Counsel of Ernst & Young, Gerard Nicolay, lawyer for PricewaterhouseCoopers, Sam Diapiazza, tax lawyer for KPMG and Roger Page, Director of Mergers and Acquisitions for Deloitte Touche, each took care to explain that lawyers within their firms complied with existing professional regulations and retained considerable control over their professional work. They also each took time to deflect criticisms and concerns about conflict of interest violations within their firms. Each, predictably, argued that MDPs would enhance the delivery of legal services to all consumers, including small firms and individual consumers and emphasized the demand in the marketplace as a compelling reason for permitting MDPs. Commenting in private, to members of the Canadian Federation of Law Societies Committee on MDPs, the Chair of the ABA Commission admitted to being unimpressed with the presentations of representatives of the Big Five to the Committee:

> "They just don't have the foggiest notion regarding the practice of law. An example was posed to them in the hearings regarding the representation of Air France and British Airways in the construction of an air terminal and whether they could represent both. They saw no problem in doing so. When indicated that lawyers would be in a conflict, the accountants said they would keep the client that paid the most" (Billington Notes, 1999).

The Big Five continued their expansion into law. In August 1999, KPMG announced the creation of a strategic alliance with SALTNET, a network of state and regional tax lawyers (KPMG press release, 1999; Campo-Flores, 1999). And in November 1999 Ernst & Young established McKee Nelsen Ernst & Young in Washington D.C. (Ernst & Young news release, 1999). Described as a "highly unusual relationship" by the ABA Commission on MDPs (American Bar Association, March 2000: 11) Ernst & Young agreed to furnish a significant part of the start up capital for the firm and to lease space in a building owned by Ernst &Young in return for sharing the professional service firm's name and a client referral arrangement. The encroachment included branches of the American Bar Association when, in October, 1999, the ABA Section on Litigation and PricewaterhouseCoopers announced that the Section had chosen

PricewaterhouseCoopers as its Section "litigation consulting sponser" an arrangement in which PricewaterhouseCoopers will provide enhanced benefits and resources to the Section's members (Stratton, 1999: 589).

The threat of encroachment in law by large accounting firms was accentuated by the announcement in July of 1998 of a merger between former competitors Price Waterhouse and Coopers & Lybrand. The resulting firm, PricewaterhouseCoopers (PwC), generated nearly five billion (US$) in combined net revenues and employed over 150,000 professionals around the globe. The combined firm employed one thousand six hundred lawyers in forty-two different countries (Eaglesham, 1998). Shortly after the merger announcement, PwC representatives announced their intention to expand their market presence in legal services and confirmed that they had selected "Landwell" as the name of its network of globally affiliated law firms (Richter, 1998). The ABA Commission on MDPs noted, with some concern, that PwCs announcement concluded with a declaration that PwC intended to be one of the world's five largest law firms by 2004 (American Bar Association, March 2000).

## World Trade Organization

The efforts of the Big Five to establish fully integrated MDPs in the field of legal services received support from the World Trade Organization. As early as 1989, during the Uruguay Round negotiations, the Secretariat of the World Trade Organization produced a note on "Trade in Professional Services" (WTO, August, 1989) which contained general information and data on trade in professional services. The document also contained two short sections that focused on legal services, and suggested that professional regulations around the globe presented a significant barrier to open and free trade in professional services.

The World Trade Organization established Working Group on Professional Services in 1995 devoted to increasing "market access" in professional services. As a matter of priority, the Working Group focused first on the accountancy sector and decided to continue, on a "sector by sector" basis, to remove professional barriers to trade in legal, engineering, architectural and other services around the world. The Working Group specifically targeted Canada and the US, in 1998, because their "professional services make a significant contribution to commercial service exports (World Trade Organization Press Release, 10 December, 1998).

The World Trade Organization actively promoted the concept of removing jurisdictional barriers between professions and strongly supported the model of fully integrated MDPs in the legal profession:

> "The concept of 'one-stop-shopping" and access to high quality services for firms doing business cross-border appear as major factors in favouring the internationalisation of the legal profession...The main obstacle to trade in legal services is represented by the predominantly national character of the law and by the national character of legal education...The legal profession is divided across national lines and reflects the national character of the law...An important market access barrier are restrictions on the organizational form for the practice of law " (World Trade Organization, July 1998).

The Working Group argued that the existence of professional regulators, divided by national and often local jurisdictions, constituted a "fundamental barrier to trade in services" (World Trade Organization, July 1998: 1-2). Multidisciplinary service providers, working in a global jurisdiction, formed a key objective of their mandate.

As stated, the policies of the World Trade Organization only have the status of guidelines. The intent of the World Trade Organization, however, is to incorporate these guidelines into ongoing rounds of trade negotiations. Should the guidelines be incorporated into the *General Agreement on Trade in Services* (GATS) they will become legally binding on participating nations. State pressure, from both provincial (or state) and federal legislatures to endorse MDPs would follow soon after.

## Law Firm Merger Activity

Between June of 1999 and July 2000 several US and Canadian firms announced their intentions to merge. The most commonly cited justifications for these mergers were pressures of "globalization" and an acknowledgment of the competition traditional law firms are facing from Big Five firms in countries outside North America (American Bar Association, March 2000: 3). The US mergers included the first large scale transatlantic merger of Clifford Chance of the UK, Punder, Volhard, Weber and Aster of Germany and Roger Wells of New York City (Morris, 1999), Coudert Brothers of New York with an Australian and a Belgian firm (*Today's Update,* September, 1999), New York's Haythe & Curley with Toronto's Tory Tory (Melnitzer, November, 1999), Christy & Viner of New York with Salans, Hertzfeld & Heilbronn of Paris (*Today's Update,* June, 1999) and a 'strategic affiliation between Holland & Knight of New York and Haim, Samet, Steinmetz, Haring and Co. of Israel (*Today's Update,* June, 1999).

Canadian mergers included a five way combination between Borden & Elliott of Toronto, Montreal's McMaster Gervais, Scott & Aylen of Ottawa, Ladner Downs of Vancouver and Howard Mackie of Toronto to create a 600 lawyer firm (*International Financial Law Review,* April 2000: 3). Commenting on the motivations for the merger, a senior partner of a prominent Vancouver firm., observed:

> "This was in direct response to this [MDP] issue and to the increasing globalization of legal services. For a while, we considered various means to address the problem, including merging with another international law firm or a Big Five firm. But it became clear that the Big Five are getting pushed out of the global market by regulators. So we came up with a strong national solution. We will continue to look for a US partner" (Interview, Vancouver Law Firm Partner 2000).

Earlier, in 1998, Fraser & Beatty from Toronto agreed to merge with the Alberta firm of Milner Fenerty. In November of 1999, Gowling Strathy & Hendersen of Toronto merged with Calgary's Code Hunter. The following month Campbell Godfrey of Toronto, Martineau Walker of Montreal and Russel Dumoulin of Vancouver announced their merger (*International Financial Law Review,* April 2000: 3). In commenting on the burst of merger activity, the *Canadian Lawyer* (Melnitzer, 1999: 37) stated that "the threat posed by accountants' international clout is surely a significant threat behind" the mergers. The Canadian Lawyer also observed that anyone wanting to know what Canadian law firms were planning strategically behind the scenes had only to look at the firms' public positions on MDPs:

> "Coincidentally – or perhaps not coincidentally – the [Scott Aylen et al] merger occurred only two months after LSUC passed its new MDP rules, fitting nicely within the restrictive MDP recommendations of the committee [David] Scott co-chaired. The dispatch with which Scott's firm acted on the LSUC positin has led cynics to suggest that anyone who wants to know what Canadian firms are up to behind the scenes need only scrutinize their partner's public positions on MDPs. When [Thomas] Heintzman staunchly defended the CBA's pro-MDP stance at the annual convention, for example, unsubstantiated rumours circulated that McCarthy's had already explored an MDP venture with one of the Big Five" (Melnitzer, 1999: 37).

The MDP issue, and the competitive position of Big Five accounting firms, had become a triggering factor in a significant restructuring of the organizational field within North America.

**The MDP model is challenged by State and Professions**

The Law Society of Upper Canada was the first jurisdiction in Canada and the second in North America (after the District of Columbia) to enact legislation regarding participation in MDPs by lawyers. Its Futures Task Force issued a *Final Report of the Working Group on Multidisciplinary Partnerships*, on September 25, 1998. In rejecting fully integrated MDPs, the Report commented on the significant "institutional risks" presented by MDPs to the legal profession including the loss of solicitor-client privilege, threats to the independence of lawyers and the potential for conflicts of interest for lawyers. The Working Group rejected the notion of fully integrated MDPs, without controls for the following reasons:

> "The Working Group recommends against the acceptance of [full integration] for the following reason:
>
> 1. The fundamental importance of privilege to the administration of justice and the threat which is perceived by relationships of this kind and the incompatibility in terms of public duty as between the accounting profession (the principal protagonists for MDPs) and the legal profession leads to the conclusion that MDPs between these groups are incongruent and inappropriate, whatever the business case may be. The convenience of "one stop shopping" in a full-blown MDP must

> not be permitted to overwhelm professional responsibilities of basic sociological importance" (Law Society of Upper Canada, 1998b: 7).

The Report concluded with an endorsement of MDPs "where the partnership offers legal services only and is effectively controlled by lawyers. This would eliminate the concerns respecting privilege, conflicts of interest, independence and public duty as the firm would be confined to the delivery of legal services" (Law Society of Upper Canada, 1998b: 7).

The Report also included a criticism of 'captive firms' and observed that although the extant model of captive firm, presented by Donahue & Associates, appeared to comply with current regulations, the firm presented "regulatory issues which require independent study...it is recommended that an appropriate vehicle be struck to undertake this study" (Law Society of Upper Canada, 1998b: 148). Accordingly, on April 30, 1999 the Law Society of Upper Canada amended its By-Laws with the addition of By-Law 25, which permitted members to join multidisciplinary practices only if lawyers composed the majority of partners of the firm and the firm engaged primarily in the practice of law. The regulation has the force of law and effectively eliminated the possibility of full integration between a Big Five professional services firm and an associated or captive law firm in Ontario.

At the same time as the Ontario Law Society was attempting to contain the extension of Big Five multidisciplinary practices to law through professional regulation, the multidisciplinary activities of large professional service firms came under criticism from other actors representing the interests of the state. The first high profile incident involved a U.K. court decision against KPMG. In *Prince Jefri Bolkiah v. KPMG,* the British House of Lords extended the legal standard of confidentiality-i.e., the duty not to communicate information with respect of an existing or former client-to accountants who provide litigation support services. The judgement questioned the effectiveness of the Big Five's practice of using "Chinese Walls" to insulate confidential information. The term "Chinese Walls" refers to the use of a variety of structural and behavioural controls to protect confidential information within a large organization. Techniques include making target sub-units physically separate from the rest of the organization, secrecy agreements and restricted movement of files within an organization). The case provided a potent public criticism of the professional ethics of Big Five firms and was cited widely in nearly all inquiries into the desirability of MDPs within the legal profession.[25]

The Big Five also drew criticism from state regulators, particularly capital market regulators, such as the US Securities Exchange Commission (SEC) and the Ontario Securities Exchange Commission (OSC), for their attempts to provide both audit and legal services. In an extended campaign of de-legitimation, various representatives of the SEC made public speeches that criticized the Big Five firms for combining audit with consulting and legal services. On December 17, 1998 the SEC's Director of Enforcement Richard H. Walker stated:

> "What do we say (i) when lawyers in one part of a firm are ethically bound to advocate a client's interest and hold information obtained from the client in the strictest confidence; (ii) while accountants in another part of the firm are ethically bound to exercise scepticism in dealing with the client's management and must show primary allegiance to the public by disclosing damaging confidential information about the client; (iii) while consultants in another part of the firm are giving the client management advice, the results of which may be reviewed during the audit; (iv) and while others in the firm are trying to sell expensive new goods and services to the client" (Securities Exchange Commission, Walker Speech, December 17, 1998).

The SEC's chief accountant Lynn Turner declared 1999 to be the "year of the accountant" and regulatory attention on the conflict between audit and other services in large accounting firms became intense. The SEC continued to publicly criticize multidisciplinary practices. On March 6, 1999 then SEC Commissioner Norman S. Johnson stated:

> "Of all the varied independence problems, there is one that I personally find especially troubling: the efforts by accounting firms to expand into the legal services are…Attorneys have an ethical duty to represent zealously the interests of their private clients, and it is impossible to reconcile this role as

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[25] The House of Lords decision against KPMG forms part of the supporting material every MDP commission of inquiry by Canadian bar associations (Alberta, Ontario, Quebec, British Columbia, Canadian Bar Association, Federation of Law Societies of Canada) and nearly all of the US commissions. A partial list includes the American Bar Association Commission, New York State Bar Association Committee, the Illinois Committee, the Wisconsin Commission, the New Jersey Commission, the Florida Commission, the Ohio Commission and the Philadelphia Commission.

> private advocate with the duty accountants and auditors owe to the investing public." (Securities Exchange Commission, Johnson Speech, March 1999).

In 1999 the Independent Standards Board, an advisory organization developed in 1997 as a result of discussions between the SEC and the AICPA regarding concerns about auditor independence, commissioned a report (the "Earnscliffe Report) which found that "Most (interviewees) felt that the evolution of accounting firms into multi-disciplinary business service consultancies represents a challenge to the ability of auditors to maintain the reality and the perception of independence: (Securities Exchange Commission, June 27, 2000).

On January 14, 1999 the SEC censured Big Five firm PricewaterhouseCoopers LLP for violating auditor independence rules and improper professional conduct. Pursuant to the settlement agreement PwC agreed to submit to an independent internal review. The highly publicized review found "thousands" (Moore, 2000: 141) of conflict of interest violations by the firm. Although the investigator acknowledged that many of the violations were relatively minor in nature, he cited both their volume and the firm's "laxity and insensitivity" (Faradella, Jollander-Blumoff, Fleischer, Fukayama and Klosterman, 2000: Executive Summary) to the issue of auditor independence as posing serious problems of organizational structure and control. PwC, in settlement, contributed $2.5 million to a fund for education on independence and agreed to purchase an expensive computer system designed to track conflicts (Moore, 2000). Following release of the Report the SEC instructed the accounting industry's Public Oversight Board to investigate seven other major accounting firms.

The event was attributed, by outside observers, as setting in motion a major restructuring of PwC that would, eventually, lead to the restructuring of PwC's consulting practice (Moore, 2000) and the announcement to the SEC, on September 10, 2000, that it was negotiating the sale of its consultancy practice to Hewlitt Packard Co. for $18 billion (SEC, September 10, 2000). Two other Big Five firms voluntarily took steps to separate their consulting and audit activities. In May, 2000 Ernst & Young announced the sale of its consulting arm to France's

Cap Gemini for a combination of shares and cash worth $US 11 billion, forming Cap Gemini Ernst & Young. In June KPMG announced the sale of twenty percent of its consulting arm to Cisco Systems, an internet-equipment provider, for $US 1 billion (McAnamee, Dwyer, Schmitt and Lavelle, 2000).

Notwithstanding these efforts, on June 27, 2000, the SEC proposed new rules designed to "modernize auditor independence" (Securities Exchange Commission, June 27, 2000). The rules set out a list of prohibited activities for auditors including giving legal counsel and investment advice, or performing bookkeeping, appraisal and actuarial services, human resource services, designing information systems used to generate financial statements and investment banking. Although the proposed rules did not constitute an outright prohibition of MDPs in Big Five firms, it effectively restricted a number of their core activities.

The SEC proposals would severely limit the ability of Big Five firms to integrate their 'captive' law practices within their core organizations. As Matthew Saunders, a UK based partner with Stephenson Harwood explains:

> "Its [the SEC's] proposals seek to have the effect of disqualifying accountants from providing auditing and legal services to any multinational company with shares listed in the US regardless of where clients or advisors may be located, in circumstances where they are not deemed by the SEC to be sufficiently independent...Whilst a tied law firm [a 'captive' law firm] would still be able to advise audit clients which had no listing in the US or did have such listing but were subject to audit by a different firm of accountants, the prospects of selling the attractions of the one-stop shop to significant corporate clients will be reduced if the proposals are implemented. The prospects of developing the high-tech client bases of the Big Five and their tied law firms would be particularly affected because of the proliferation of such companies listed in the US. Perhaps the most harmful impact of regulations along the lines of these would be the imposition of a ceiling on how far a tied law firm could act for its corporate clients. As soon as the client got to the stage where an SEC listing was desirable a tied law firm would have to resign or see the audit work go elsewhere. Such a corporate client might be best advised simply to avoid the risk of the disruption and dislocation this might cause and instruct a traditional law firm from the start" (Saunders, 2000: 1).

Initial reaction by some of the Big Five was emphatic and aggressive. In August, 2000, shortly after the SEC's announcement of the proposed rules, three of the Big Five firms, KPMG, Arthur Andersen and Deloitte & Touche, threatened to sue the SEC. The remaining two, PricewaterhouseCoopers and Ernst & Young announced their support (Schroeder, 2000). In a series of public meetings, described by outsiders as "a pitched battle, the likes of which Washington and Wall Street have never seen before" (McNamee, Dwyer, Schmitt and Lavelle, 2000: 157), representatives of three of the Big Five and the AICPA challenged the proposed rules.

During testimony before the SEC, three of the Big Five (KPMG, Arthur Andersen and Deloitte Touche) argued that the rules would remove about 30 per cent of their current consulting practices and, ultimately, would affect the ability of Big Five firms to recruit top level talent. They also challenged the SEC to demonstrate any cases in which audit independence had been compromised by the presence of additional non-audit services. The SEC responded with two prominent illustrations – Waste Management Inc.'s $3.54 billion write-down of profits and Micro-strategy Inc. $55 billion restatement of earnings – as examples of where accountants' consulting work and financial ties to clients misled investors and harmed the client corporations (Securities Exchange Commission, June 27, 2000).

After considerable debate, and frenetic political lobbying by the Big Five,[26] the SEC issued a compromise audit rule change. The compromise proposal relaxed a contentious rule that barred accounting firms from doing information consulting work for their audit clients. The new rule proposal allowed audit firms to perform IT consulting provided the clients retain management responsibility for the system (Securities Exchange Commission, November 15, 2000). Any consulting fees paid to the audit firm would also have to be disclosed. Significantly, the prohibitions relating to legal practice of audit firms remained in place.

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[26] *Business Week* (September 25, 2000, "Accounting Wars") reports that, in response to the SEC, KPMG, Deloitte and Andersen "have unlimbered a massive political campaign. One of their first calls was to Representative Michael G. Oxley (R-Ohio), chairman of the House Commerce Committee's securities panel, which oversees the SEC. He calls the proposed rule a "Draconian solution to a perceived problem." And Oxely isn't alone. Within four weeks of the SEC's rule proposal, 46 members of the House and Senate wrote to Levitt challenging or questionaing his plans."

### Stage 3: Analytic Commentary

Two distinct and competing discourses are evident at the end of this stage. One represents the traditional voice of professional governance and justifies the continuation of jurisdictional boundaries between professions. Professional associations are clearly the strongest proponents of this discourse. They are, however, supported by some large firms that see some self-interest or strategic advantage in the maintenance of traditional distinctions between professions. They argue that changes in the existing rule structure will have dire and unforeseen consequences, not only for members of the profession, but also for the 'public' as a whole.

The other discourse advocates change and justifies this change on a faith in 'the market' to adequately control the behaviour of firms and individual practitioners. Proponents of this discourse include the Big Five professional service firms, global trade organizations and members of a few large law firms with international aspirations. Somewhat surprisingly, small firm practitioners also seem to support this view.

The competing discourses are made to very different audiences. Proponents of professional governance appeal to the state to legitimate maintenance of the status quo. They argue that legal services is, at its core, a public service, and the continuation of professional controls and traditional distinctions between professions, ultimately, serves the 'public' good. Few attempts are made to define the 'public' or to specify which members of the public are most likely to benefit from this resistance to change.

Proponents of market governance appeal to the 'consumer' to legitimate their argument to change the rules of the game. They argue that market controls are more appropriate to a 'new global reality' for professional services. This group also avoids serious specification of *which* consumers will benefit the most from changes.

The two discourses were on prominent display in the recent SEC hearings on auditor independence, most particularly in exchanges between Commission Chair Arthur Levitt and Stephen Butler, CEO of KPMG-USA. Chairman Levitt justified the new rules that threatened to limit the consulting activities of audit firms, on the basis of protecting the "fundament of the capital market system of this country and, ultimately, its social fabric" (Securities Exchange Commission, Hearings Transcripts, 2000). In response, Stephen Butler argued that the marketplace, not the state, ought to make that judgement:

> "The rush to regulate is all the more baffling in view of requirements only recently put in place by [the Big Five] to address these concerns – measured, market oriented policies...We have a very, very strong preference that auditor independence be dealt with in the private sector, not at the government level" (Securities Exchange Commission, Hearings Transcripts, 2000: 4).

The differences in discourse may, in part, be explained by assumptive differences in the level of analysis. The professional discourse includes many assumptions that relate to an individual level of analysis. The assumed consumer is an individual, relatively unsophisticated and in a position of reduced power vis-à-vis the professional service provider. The 'public' that professional governance structures are designed to protect are, essentially, a conglomeration of such individuals. In contrast, advocates of market governance structures assume an organizational level of analysis. Consumers are sophisticated and relatively powerful organizations.

Shifts between professional and market based governance mechanisms, thus, may be partly understood as differences in levels of analysis. More importantly, they may be explained in relation to the emergence of large organizations in the field of professional services. Professional governance mechanisms relate to an earlier time where professional services occurred, largely, between individual professional service providers (or small firms) and individual consumers. Market governance mechanisms relate to an emerging new era where professional services are produced by large and complex professional service firms and consumed by even larger corporations.

### Stage 4: Epigenesis of the MDP-Fragmentation of the Field

The coercive action of the SEC against the Big Five created an initial impression that the field structure had stabilized and that traditional distinctions between professional services had been re-established. The illusion was supported by the defeat of the ABA's draft resolution supporting MDPs by the House of Delegates in July 2000. Although the ABA Commission had, in 1999, proposed a compromise that endorsed MDPs only if lawyers remained in control of the firms, placing 'control' requirements on MDPs did not satisfy the majority of the American Bar Associations' House of Delegates. In the final vote on the issue of MDPs, in July 2000, the House of Delegates rejected the Commission's recommendation to permit MDPs that were 'controlled' by lawyers. The opposition was spearheaded by five powerful state bar associations (New York, Florida, Illinois, New Jersey and Ohio) and was led by Robert McCrate of the State Bar of New York. The debate was remarkably brief (the transcript of the debate is less than three pages long) and the vote was completed in a matter of minutes. The five state bar associations presented a joint resolution that rejected MDPs. Robert McCrate spoke first, outlining several 'core values' that must be upheld before the new organizational form could be endorsed:

> These principles set forth in the first resolved paragraph include an affirmation of five enumerated core values. An affirmation that lawyers are subject in each jurisdiction to the law governing lawyers. That the law governing lawyers was developed to protect the public interest and to preserve the core values that are essential to the proper functioning of the justice system. That entities charged with attorney discipline should reaffirm their commitment to enforcing their respective laws governing lawyers. That to the extent necessary, each jurisdiction should reevaluate and refine the definition of the practice of law. Sixth, that jurisdictions should retain and enforce laws that generally bar the practice of law by entities other than law firms. Seven, that sharing of legal fees with non-lawyers and ownership and control of the practice of law by non-lawyers are inconsistent with the core values of the profession. Finally, that the law that prohibits lawyers from sharing fees with non-lawyers and from transferring ownership or control over entities practicing law should not be revised. The first further resolved paragraph directs the Association's Committee on Ethics and Professional Responsibility to undertake a review of the Model Rules and recommend to the House such amendments as are necessary to assure safeguards in the rules relating to strategic alliances and contractual relationships with non-legal professional service providers that are consistent with the statement of principles in the Recommendation" (American Bar Association, July 2000: 11).

Dale Harris, of the Denver Bar Association, who spoke against the motion, admitted that the lack of consensus on the issue was sufficient reason to defer the vote:

> "You have before you a report, I think, that was laid at your places, showing that of those state and local bars who have undertaken work in this area, approximately an even number of the committees who have reported out come out in favor of MDP in some fashions. And the same number come out against MDP in almost any form. Even those committees who have reported have widely divergent views on many of the underlying issues, such as lawyer control versus non-lawyer control, which professions should be included or not included if MDPs were recognized. Even such points as whether or not this is just a lawyer/accountant debate or whether it's an issue affecting lawyers in small towns and small firms, in rural communities across Colorado and across America. The point is that as of today, there is no consensus on MDP, even among the groups who have reported." (American Bar Association, July 2000: 22).

The final vote was 314 to 106 in support of the resolution (i.e., against MDPs). Significantly, the resolution not only rejected MDPs, but also rejected the notion of additional study of MDPs and disbanded the Commission. The vote was described in the *National Law Journal* as "a blow to the accounting industry and the Big Five accounting firms in particular, which have been expanding into the legal services market overseas and hoping to do so in the United States" (Rosenberg, 2000: 1). Richard Miller, general counsel of the American Institute of Certified Public Accountants (AICPA) condemned the outcome as projecting a "lack of vision" within the American Bar Association and demonstrating that those in opposition to the MDP were more interested in "maintaining their guild" than improving the delivery of legal services to clients (Rosenberg, 2000: 1). McCrate, while acknowledging some surprise for the depth of support of his motion to reject MDPs, stated that the vote would send a powerful message to accounting firms and that it would "discourage recruitment" of lawyers by the Big Five: "I think they are going to find that people will be increasingly reluctant to leave law firms to move to accounting firms" (Rosenberg, 2000: 1). The New York State Bar Association issued a press release acknowledging their role in preventing the spread of MDPs which, they suggested were "conceived by Big 5 accounting firms as a means of expanding their business empires" (New York State Bar Association and Erie County Bar Association, September, 2000).

The vote against MDPs by the House of Delegates is best interpreted as originating with professional regulators at the state level. Although some academics and private practitioners constitute part of the House of Delegates, they form less than ten per cent of the representatives (ABA website). The majority of representatives are drawn from state and local bar associations and it was among the most powerful of these bar associations (New York, New Jersey, Ohio, Florida, California) that the primary opposition to MDPs coalesced. Indeed, a report filed by the New York State Bar Association by Robert McCrate (the McCrate Report) that was critical of MDPs appears to have been one of the most influential factors in the outcome of the vote and was cited by several of the Delegates (Rosenberg, 2000). A representative of the Canadian Bar Association who witnessed the vote stated that, after the announcement, McCrate "received a hero's reception" with "handshakes and at least one hug" (Billington Interview, 2000).

It is also instructive to analyze *which* bar associations spoke in favour of MDPs. Local bar associations that represented large urban centres with strong capital markets practices and large national or international law firms tended to vote in favour of MDPs. For example, while the State Bar of New York rallied support against MDPs, the County Bar Association of New York (which includes jurisdictions around New York City) and the New York City Bar Association were both strong supporters. Similarly, the Philadelphia Bar Association, Chicago Bar Association and Denver Bar Associations supported MDPs, while their state professional bodies did not.

The vote split suggests a sharp division on MDPs between associations that represent different types of lawyers and different types of law firms. Bar Associations in Chicago, Denver and New York City are most likely to represent large, urban firms with international commercial practices and capital markets or securities work. State bar associations, such as the Erie County or New York State Bar Association, in contrast, might be assumed to represent the influence of equally large law firms, but whose practice was less international in scope and might focus more explicitly on a state or regional marketplace. This interpretation is supported by the observation of James P. Scheller, a partner in a Washington, D.C. law firm, who described the House of Delegates vote as a "well organized political coup" by state bar associations seeking to protect "their own future and that of their largest local firms" (National Law Reporter, January 2001: 2). Sherwin Simmons confirmed this view in private comments made to the National Multidisciplinary Partnerships Committee meetings in Montreal just before the vote when he expressed doubts about his Commission's recommendations passing without amendment:

> "The American Bar Association's House of Delegates is comprised of five hundred representatives which is dominated by the State Bar Associations. They are largely traditionalists which means things are very slow to change. They are also highly influenced by firms with large regional or state interests. It will be difficult to get the MDP recommendations through the House of Delegates. Even if they are passed by the House, then each of the fifty four jurisdictions will have to make their own decision whether to implement" (Billington Notes, 1999).

**Normative and Regulatory Diffraction**

The decision of the American Bar Association to reject MDPs failed to unify state, provincial and regional bar associations on the issue. Rather, North American legal jurisdictions have produced a cacophony of regulations regarding MDPs, with some powerful jurisdictions such as Philadelphia and New York State passing regulations in support of MDPs, some passing regulations against them and the majority (23 states representing fifty percent of US lawyers), as of January, 2001, were still actively studying the issue.

In Canada a similar fragmentation of opinion exists. The first jurisdiction to pass regulations on MDPs, Ontario, adopted an "anti-Big Five" or "control" model, requiring MDPs to be controlled by lawyers and engaged, primarily, in the practice of law. Quebec, the next jurisdiction to pass MDP legislation, is slightly more permissive, but when less that fifty percent of an MDPs' professionals are lawyers, the firm must obtain licensing approval from the Quebec bar and a commitment that non-lawyers in the MDP will abide by the ethical standards imposed by the provincial bar association. British Columbia is the first jurisdiction to pass MDP regulations since the SEC rules and the ABA vote, and have proposed a fully integrated model of MDP, permitting their lawyers to participate in MDPs without any restrictions on control or the type of service to be offered by the firm (Interview, Executive BC Law Society 2000). In May 2000, the Ontario branch of the Canadian Bar Association published a report entitled *Multi-Disciplinary Practice: Making it Work for Lawyers,* which enthusiastically embraced MDPs and encouraged their formation by small and mid-sized firms (Canadian Bar Association, May 2000). The status of legislation regarding MDPs across North America is depicted in Table 4.12.

While regulators are exhibiting considerable confusion about the appropriate regulatory model for MDPs, law firms both in Canada and the US are experimenting with a variety of MDP forms. US law firm Bingham Dana LLP, for example, merged its money management practice with Legg Mason, Inc. an investment firm (American Bar Association, March 2000: 12). Their affiliation is reported to be the first partnership between a law firm and an asset management firm in the United States. The new entity has become a registered investment advisor and is intended to be a vehicle for offering wealthy clients more sophisticated investment advice. The firm also announced the formation of a consulting entity to provide similar financial advice (Shepherd, 1999). The law firm of Fredrikson & Byron, the fifth largest law firm in Minnesota, similarly announced the formation of a consulting service for physicians and medical organizations (Schuarte, 1999). Similarly, Duckson & Carlson, another Minneapolis firm, announced the establishment of an accounting, tax and consulting firm.

## Table 4.12

### Status of Legislation/Regulation of MDPs in North America
(As at January 30, 2001)

### A. State Bars

| State | Pro/Con | MDP Model |
|---|---|---|
| Alabama | Still Studying | |
| Alaska | No committee | |
| Arizona | Pro MDP | Full integration |
| Arkansas | Con | |
| California | Still Studying | |
| Colorado | Pro | Controlled by lawyers |
| Connecticut | Still Studying | |
| Delaware | Still Studying | |
| District of Columbia | Pro | Full integration |
| Florida | Con | |
| Georgia | Still Studying | |
| Hawaii | No committee | |
| Idaho | Still Studying | |
| Illinois | Con | |
| Indiana | Still Studying | |
| Iowa | Still Studying | |
| Kansas | Con | |
| Kentucky | Con | |
| Louisiana | Still Studying | |
| Maine | Pro | Controlled by lawyers |
| Maryland | Con | |
| Massachusetts | Con | |
| Michigan | Still Studying | |
| Minnesota | Pro | Controlled by lawyers |
| Mississippi | Still Studying | |
| Missouri | Pro | Controlled by lawyers |
| Montana | Still Studying | |
| Nebraska | Con | |
| Nevada | Still Studying | |
| New Hampshire | Still Studying | |
| New Jersey | Con | |
| New Mexico | Still Studying | |
| New York | Con | |
| North Carolina | Pro | Controlled by lawyers |
| North Dakota | Still Studying | |
| Ohio | Still Studying | |
| Oklahoma | Still Studying | |
| Oregon | Con | |

| | | |
|---|---|---|
| Pennsylvania | Con | |
| Rhode Island | Con | |
| South Carolina | Pro | Controlled by lawyers |
| South Dakota | Pro | Form undecided |
| Tennessee | Con | |
| Texas | Con | |
| Utah | Pro | Form undecided |
| Vermont | Still Studying | |
| Virginia | Still Studying | |
| Washington | Still Studying | |
| West Virginia | Con | |
| Wisconsin | Still Studying | |
| Wyoming | Pro | Form undecided |

### B. Local and Regional Bars

| | | |
|---|---|---|
| Boston | Pro | Controlled by lawyers |
| New York City | Pro | Full integration |
| New York County | Pro | Controlled by lawyers |
| Orange County | Pro | Form undecided |
| San Diego | Pro | Controlled by lawyers |
| Denver | Pro | Full integration |
| St Louis | Pro | Form undecided |
| Nassau County | Con | |
| Philadelphia | Pro | Full integration |

### C. Canada

| | | |
|---|---|---|
| Ontario | Pro | Controlled by lawyers/only practice law |
| Quebec | Pro | Full integration but contractual control by lawyers' professional association |
| British Columbia | Pro | Controlled by lawyers |
| Alberta | Pro | Controlled by lawyers/only practice law |

In Canada, a Calgary law firm, MacLeod Dixon, announced the establishment of a high technology "incubator" involving a strategic alliance between a local biotechnology firm and an international investment bank (Interview, Partner Calgary Law Firm). Press releases from the newly created firm Borden Ladner Gervais proclaim it to be Canada's "first multidisciplinary" law firm (Borden Ladner Gervais Press Release, September 12, 2000). The Law Society of British Columbia announced the creation of a staff position whose mandate would be to "encourage and assist members in their efforts to establish multidisciplinary practices" (Interview, Executive, Law Society of British Columbia).

It is difficult to determine how representative these reports are of the range of multidisciplinary activity amongst North American law firms. The mere existence of a *single* 'multidisciplinary' law firm is, however, a significant event in demonstrating a dramatic deviation from the accepted organizational form for lawyers for the previous hundred years. The events represent a striking change in normative assumptions about who might become a partner in a law firm and the type of activity that a law firm might be expected to undertake. The cases also represent a dramatic change in the professional regulatory structure which changed to accommodate these events.

The actions of the various bar associations and the Securities Exchange Commission did not slow the movement of Big Five into legal practices. It did, however, change the organizational form used by the Big Five. In September 2000 Ernst & Young announced a 'strategic alliance' with the Vancouver law firm of Clark Wilson (Ernst & Young, September 2000). The firms were careful, in their announcements, to distance themselves from either a fully-integrated MDP or the 'captive firm' model. Rather, the firms described their relationships as a non-exclusive referral arrangement in which each firm was free to continue existing relationships with other professional service firms. The arrangement was acknowledged as a deferral to professional regulators who wanted some assurances that the firms were independent (Interview, Law Society of BC 2000).

These examples suggest that the impact of the Big Five model of multidisciplinary practice effectively ruptured the consensus over normative assumptions about the appropriateness of expansion of services in law. Historically, the American Bar Association has only held the power to suggest regulations to member state and local bar associations. In early debates over the MDP issue, the suggestions of the ABA were upheld at a local and state level. Similarly, in Canada, early inquiries into the appropriateness of MDPs were met with polite indifference by provincial bar associations and suggestions to endorse MDPs were shelved or abandoned. By the end of this period, however, the North American legal profession presented a patchwork of different regulatory responses to MDPs. More important, is the observation that, unlike before, professional regulators seemed unable to control the emergence of MDPs in the marketplace for legal services.

## Summary and Conclusion

The foregoing provides an historical account of the emergence of MDPs in North American law. It also describes a distinct shift in the mechanisms of social control of a changing organizational field from normative controls delivered primarily through formal professional associations to market controls delivered primarily through informal bilateral exchanges. The shift was accompanied by a change in the underlying institutional logics, rules of exchange and means of compliance between organizational actors in law. More significantly, the shift in governance was accompanied by a marked loss of power of professional associations to regulate economic activity and the emergence of an organizational form that reflected a compromise of interests between powerful actors engaged in the debate over multidisciplinary partnerships.

Prior to 1975 the delivery of legal services in North America was dominated by a professional mode of governance. Professional associations regulated the organization of the market for legal services. They did so at arm's length from state governments, but with explicit and legitimate authority from state legislation. Their preferred method of social control was through the use of normative devices. Coercion was effected by peer pressure (expulsion from practice, for example, was the ultimate sanction), selective access to resources and was ensured with the underlying threat of state intervention. Cooperation was effected by long-standing and common socialization rituals (law school, firm internships) and ensured access to rare resources (i.e., a monopoly right to provide legal services).

The professional mode of governance was underpinned by institutionalized assumptions and logics that were rarely questioned. These logics included the notion that practicing law was different from a regular commercial enterprise. Because lawyers occupied a 'special position' in society, and dealt with such effusive constructs as 'justice' and 'constitutional right', the product of their activity was, in part, a public good and the act of producing it was imbued with moral characteristics. This logic was used to maintain the legitimacy of practices that offended normal competitive behaviour including price setting, labour mobility and advertising prices.

The professional mode of governance also contained distinct but unarticulated assumptions about the appropriate organizational form of law firms. Law firms were to be organized as partnerships, rather than corporations. Even when rights of incorporation were granted to lawyers, the normative practice of organizing professional corporations into partnerships persisted. There was also an assumption that partnerships would remain relatively small operations that operated within the jurisdictional boundaries of individual professional associations. The professional logic also assumed that interests of individual members, in relation to the state and in relation to other competitors would be dealt with collectively, at the level of the professional association. And, it was assumed that innovations in practice, such as the adoption of multidisciplinary partnerships, would not proceed without the uniform acceptance of such innovations by powerful professional associations in law across North America.

These assumptions were embedded in a complex array of ethical rules and professional values. The profession had developed an equally complex system for the reproduction and dissemination of these collective values throughout the continent. North American lawyers shared rituals of practice, a common language and common institutions of education and organization. The values and assumptions gained their legitimacy and authority by their capacity to control and distribute resources amongst participants. Adherence to these rules and values had given lawyers several generations of long-run economic growth and prosperity.

The erosion of these assumptions, and the ultimate shift away from the legitimacy of professional governance was the result of a series of changes in the economic and institutional environment. The sequence of these changes is outlined in Figure 4.2. A rapid increase in the number of lawyers in both Canada and the US in the 1970's placed significant pressure on the internal resource base of the profession. Competition intensified and lawyers' earnings decreased dramatically. Economic pressure, combined with the influx of younger lawyers from divergent socio-economic backgrounds, produced dissatisfaction with the existing rule structure for legal practice and allowed disenfranchised members to openly question the legitimacy of the prevailing set of professional governance structures (see line 1 on Figure 4.1).

The interest dissatisfaction of members was expressed in three fundamental ways. First, within the marketplace, lawyers began to experiment with the organization and delivery of legal services. Disenfranchised members of the profession tried to pursue low-cost, commodity service organizational structures and established legal clinics and franchise law firms. Established law firms pursued business opportunities outside the profession through ancillary businesses. Second, younger lawyers challenged the prevailing governance structures with direct challenges to the courts (line 2). Finally, professional associations and state governments engaged in public debates about the efficiency and appropriateness of existing governance structures in the legal profession. In spite of the actions of several prominent committees (Kutak, Tellier and Trebilcock) professional associations successfully resisted any revolutionary changes in the governance of the profession.

**Figure 4.2**
**Characteristics of Professional and Market Dominated Fields**

| | Professional | Market |
|---|---|---|
| | **Structural Differences** | |
| **1. Formal integration** | **Highly formal**<br>-price controls<br>-labour controls<br>-marketing controls | **Highly informal**<br>-competitive pricing<br>-labour mobility<br>-open advertising |
| **2. Span of control** | **Fieldwide**<br>-controls occur at field level across all actors with great concern for effect on rest of field | **Bilateral**<br>-controls occur through bilateral interactions with no concern for effect on rest of field |
| **3. Level of control** | **Aggregate**<br>-by collectives; professional associations, trade groups etc. | **Individual**<br>-by organizations; particularly large organizations |
| | **Institutional Logics** | |
| 1. How products are characterized | As public goods | As private goods |
| 2. How rules are characterized | Rules of conduct | Rules of exchange |
| | **Mechanisms of Control** | |
| 1. Coercion values | Expulsion, Threat of state Intervention | Economic sanction, Litigation |
| 2. Consent values | Protection of group interests, common social institutions | Protection of individual or organizational interests |

The regulatory changes effected in the courts, however, produced a distinct dissonance in the value preference of professional governance (line 3). Removing restrictions on advertising and prohibitions on price setting, along with increased demands for accountability from professional associations by government raised the question of whose interests the system of professional dominance were intended to protect. It also placed into question the need for professional ethical rules that suggested the delivery of legal services was anything other than a commercial undertaking. The question of whether law was more a profession than a business became a sensitive issue in law and inspired heated debate both inside and outside the profession.

The cumulative effect of these changes, at the end of Stage 1, was to diminish the legitimacy of professional controls (line 4). Actors within the profession, however, lacked both the capacity to effect change and an appropriate model of governance to move toward. Few actors in law held sufficient resources to challenge professional associations directly. And those that did (as in McCarthy & McCarthy's challenge to the Law Society of Alberta) were limited to court challenges on narrow interpretations of constitutional law. No lawyer of firm would be willing to risk expulsion from their resource base by defying, for example, restrictions on fee-splitting between professions.

The second stage provided both the capacity to change and a competitive model for change. Big Six professional service firms spanned multiple jurisdictions and could (and did), therefore, defy any single professional association with relative impunity. Big Six firms also possessed substantial capital resources and could engage in protracted litigation with any professional association in North America. These factors combined to give Big Six firms a distinct advantage in power over both competitive organizations in law and their governing professional associations (line 5).

More significantly, Big Six firms were not subject to the normative assumptions of the legal profession. The move to providing legal services was not hampered by assumptive questions of whether law was more a business than a profession and, when combined with the altered power dependencies of the Big Six, granted these firms the capacity to effect change in the field (line 6). Big Six firms were, therefore, able to articulate an alternative model for the organization and delivery of legal services. The Big Six model of legal services was a competitive model, from the point of view of the legal profession, but provided the impetus for change within the field as actors within the professions and the state reacted to the model.

The SEC and professional associations in law reacted to the competitive model of MDP and attempted to reassert the prevailing system of professional governance. The normative controls of the American Bar Association and related professional associations were no longer sufficiently compelling. By Stage Four of Figure 1, multiple models of MDP exist in various jurisdictions throughout North America.

### *Professional versus Market Based Governance Mechanisms*

The foregoing analysis provides some observations about the characteristics of governance mechanisms, particularly the distinction between professional and market controls, and their role in field level change. Following Lindberg, Campbell and Hollingsworth (1991) we identify a series of *structural, ideological* and *processual* differences between organizational fields dominated by professional and market governance mechanisms. These characteristics are depicted graphically in Figure 4.2.

Structurally, professional and market governance mechanisms can be distinguished on three dimensions; the degree of formal integration of economic activity, the scope of coordination of economic activity and the primary level of control of economic activity. The first dimension, the degree of formal integration of economic activity, can be represented by a continuum of 'high' to 'low' or somewhat discrete categories of 'formal' versus 'informal' economic controls. Professional governance relies on a high degree of formal controls of economic activity. Before 1975, professional rules and norms, many of which developed over long periods of time, were used to construct very strict controls over economic interactions within law. Codes of professional conduct expressed tight restrictions on minute aspects of advertising (including the size and content of signs), the establishment of prices and the structure of firms. Similar controls were established over labour production and mobility. Professional rhetoric was used to mute the underlying commercial character of economic interactions.

A field dominated by market based governance structures, by contrast, adopts much less formal economic controls.[27] There is no formal structural provision for the allocation of labour resources within the field other than through dispersed transactions between organizations. Individual organizations are less restricted in their efforts to establish their own standards of pricing, advertising and firm composition. The best illustration of the diminished degree of formal controls is based on the gradual dismantling of professional rules and codes of conduct over economic behaviour in the field throughout the chronology.

The second structural dimension distinguishes between professional and market based governance mechanisms according to the span of control within the field. That is, fields may be distinguished on the question of whether economic activity within the field occurs primarily at the field level or on the basis of bilateral transactions between actors. Professionally dominated fields attempt to coordinate economic activities at an aggregate level. At the onset of the analysis, law was a closed field with a great deal of economic activity controlled at the field level. Thus the structure of firms, the composition and skill base of the labour force and the range of activities that members could engage in were all controlled at the field level with considerable concern paid to the impact of economic activity on the field as a whole.

The primary focus of economic activity in market dominated fields, by contrast, is narrower with organizational actors engaged in individual transactions with little or no concern about how their actions may affect the entire field. The reduced level of structural control over the span of economic activities is best illustrated by the sharp curtailment of normative control by professional associations such as the American Bar Association over the rules of MDP organization. At the onset of the analysis there was strong uniformity across multiple jurisdictions in both Canada and the US. At the end of the analysis, however, significant differences existed between jurisdictions in North America about the appropriate organizational form for MDPs.

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[27] Although, at the conclusion of this analysis, the field had not yet completely transformed to one dominated by market governance structures, characteristics may be inferred by the differences in controls that occurred as a result of the evolution of MDPs in the legal profession in North America.

A final structural difference between market and professional governance mechanisms relates to the primary level of analysis of economic activity within the field. Within fields dominated by professional governance mechanisms, the *association* is the appropriate level of analysis. This follows from the preceding two characteristics. If economic activity in professionally dominated fields occurs primarily at an aggregate level of analysis with formal structures for dispensing resources, it should not be surprising that associations should occupy a primary role. As market based governance mechanisms took hold in law, however, the level of analysis moves to individual organizations. This is best illustrated by the actions of the Big Five, who ignored the invitations of professional associations and interacted directly with state regulators and agents. It is also not surprising, thus, that the erosion of professional controls in law was accompanied by an intensification of merger activity amongst Canadian and US law firms. The Big Five made obvious the capacity of large professional organizations to negotiate economic interests directly with state regulators, in the absence of associational intermediaries.

Fields dominated by market and professional governance mechanisms may be distinguished, as well, by dominant ideologies or institutional logics. These differences are manifest in the primary characterization given to products generated within the field. A market-based governance approach to legal services, for example, characterizes the product as essentially a *private* good. The economic justification for MDPs, thus, provided by the Big Five, was based on the consumer welfare benefits of such organizational structures. Opposition to MDPs, given by state and professional regulators, tends to characterize legal services as primarily a *public* good, with implications for broader societal ideologies such as 'justice' and 'morality'. The struggle between these two approaches to characterizing property rights formed the two dominant strategic approaches used to legitimate different models of MDPs. These differing characterizations of field level products will be examined in greater detail in the discussion of different strategies used by actors in the MDP debate which follows in Chapter 6.

Finally, fields differ in the mechanisms of control, or how compliance and coercion is expressed. Fields dominated by professional controls use their field wide control over collective resources to coerce behaviour. Expulsion, for example, is a primary coercive threat of professional associations in law. Disbarment is the ultimate professional sanction and, effectively, denies actors access to a tightly controlled resource environment. The threat of state intervention in economic activity is another form of coercion used by professional associations. Fields dominated by market-based governance structures, by contrast, rely almost exclusively on economic sanctions and contracts to regulate behaviour.

These differences are reflected, most directly, by differences in values, either express or implied, in professional and market dominated governance schemes. Values play a complex role in the emergence of MDPs in law. At the onset, professional values are used by professional associations to effect compliance with the established order and to resist change by attacking the Big Five dominated model of MDPs in law. As professional values erode and the field moves, inexorably, to embrace MDPs, however, values are used to accommodate the change, to provide historical continuity and to reduce internal tensions within the field. These issues will be examined in Chapter 5, which examines the strategies used by major players in the MDP debate to legitimate their version of this new organizational form.

# CHAPTER FIVE
# LEGITIMATION STRATEGIES

## Introduction

This Chapter analyzes the strategies used by various actors engaged in the debate about multidisciplinary practices to legitimate their version of the new organizational form. Legitimacy is a central concept in organization theory (Dowling and Pfeffer, 1975; Hannan and Carroll, 1995; Baum and Powell, 1995) and is recognized as a critical element in the establishment and survival of new forms of organization (Aldrich and Fiol, 1994; Aldrich, 1999; Hannan and Freeman, 1989). Although the construct has received considerable theoretical attention (Suchman, 1995; Dowling and Pfeffer, 1975; Aldrich and Fiol, 1989) there are few empirical applications of the conceptual frameworks generated by this literature. The construct of legitimacy, thus, suffers from a lack of empirical definition.

This Chapter seeks to provide that definition. It begins by outlining points of correspondence between various typologies of legitimacy that exist. In the second section, these types of legitimacy are applied to the empirical context of multidisciplinary practice in law. Based on limitations observed in using typologies of legitimacy in this empirical context, this section outlines additional aspects of legitimacy that must be addressed including, what aspect of an organization is being legitimated, which audiences are being addressed and the specific strategies that are being pursued. The third section, thus, addresses the question "Legitimacy of *what?"* and identifies three categories of organizational attributes that received different modes of legitimation; the product, internal managerial processes and the external form. The fourth section addresses the question "Legitimacy to *whom?"* and identifies multiple audiences involved in legitimating multidisciplinary firms.

The final sections address the question of the means by which legitimacy is pursued. Two general approaches, actions and rhetoric, are identified. The fifth section outlines two distinct strategic actions taken by proponents and opponents of the new organizational form; legitimation by being the first to occupy the marketplace and legitimation by being the first to occupy the rule system. The sixth section analyzes what actors *said* in their efforts to legitimate their version of multidisciplinary practice. A typology of *rhetorical strategies* is identified. The chapter concludes by relating configurations of legitimation efforts to different interpretations of the dominant mode of field-level governance.

## Types of Legitimacy

The literature review in Chapter Two identified three broad theoretical approaches to legitimacy in organizational theory; resource dependency, organizational ecology and institutional theory. Although much is made of the differences between these approaches (see, in particular, the debate between Baum and Powell, in support of institutional theory, and Hannan and Carrol, on behalf of organizational ecology in the *American Sociological Review*, 1995, 60: 529-544) there is considerable commonality in the effort to describe a typology of legitimation practices between organizations. Table 5.1 summarizes these overlapping characteristics which are described in detail, below.

Dowling and Pfeffer's (1975) conceptual framework of legitimation provides the best illustration of legitimacy in resource dependency theory. This approach adopts a highly functionalist view of legitimacy, treating it as a valuable resource that is produced by aligning organizational norms and values with those of the broader social system. Dowling and Pfeffer (1975) describe three overlapping aspects of organizational legitimacy. The first is economic legitimacy or legitimacy based upon successful "competition for economic resources" (p. 124). A second form of legitimacy is 'regulative legitimacy' or legitimacy based upon "what is legal or illegal" (p. 124). The third type of legitimacy focuses on normative attributes or the degree to which the norms and values of an organization align with those of its institutional environment.

Dowling and Pfeffer are careful to point out that none of the three characteristics can, by themselves, determine legitimacy. Collectively, however, these attributes describe "three partially interdependent sets of organizational behaviors" that determine legitimacy; "those that are economically viable, those that are legal and those that are legitimate" (p. 124).

Dowling and Pfeffer's tripartite system bears considerable similarity to typologies of legitimacy drawn by institutional theorists. Scott (1995), for example, suggests that organizational legitimacy is achieved through acceptance within three "pillars" of institutionalism. Scott's regulative pillar resembles Dowling and Pfeffer's 'legal' category and refers to legal sanctions or approval and the rules and regulations that provide a basis for legitimate organizational action. Similarly, the normative pillar emphasizes social appropriateness and moral acceptance as an important aspect of legitimacy. Scott's cognitive pillar, by contrast, holds no correspondence with Dowling and Pfeffer's schema. Legitimation within the cognitive pillar requires a high degree of institutionalization of a phenomenon, to a point at which actors no longer question its legitimacy. The basis of legitimacy within this category rests upon the taken-for-granted nature of the object of legitimation, and creates something of a super-ordinate category of legitimacy. That is, it suggests a phenomenon that achieves so high a level of legitimacy that its social approval becomes internalized in the pre-conscious behaviors of actors.

**Table 5.1: Types of Legitimacy in Organization Theory**

| Resource Dependency | Institutional Theory | | Population Ecology | Dominant Governance Mechanism |
|---|---|---|---|---|
| Dowling and Pfeffer (1975) | Scott (1995) | Suchman (1995) | Aldrich (1999) | |
| • social | • normative | • moral | • moral | • professional |
| • economic | • (technical) | • pragmatic | • learning | • market |
| • legal | • regulative | | • regulative | • state |
| | • cognitive | | • cognitive | |
| | | • structural | | |

Although Scott (1995) does not have an explicit category that corresponds directly to Dowling and Pfeffer's 'economic' legitimacy, he does provide one by implication. Scott divides organizational environments into 'institutional' and 'technical' contexts. The three pillars describe aspects of institutional environments, whereas competitive or economic success occurs in the technical environment (Scott and Meyer, 1983). Prowess in the technical environment can also provide legitimacy for an organization; however, Scott and Meyer qualify that observation by noting that technical success rarely occurs independently of achieving legitimacy in the institutional environment.

Scott (1995) argues that each of the pillars contributes "related, but distinguishable" bases of legitimacy:

> "The regulative emphasis is on conformity to rules. Legitimate organizations are those established and operated in accordance with relevant legal or quasi-legal requirements. A normative conception stresses a deeper, moral base for assessing legitimacy. Normative controls are much more likely to be internalized than are regulative controls, and the incentives for conformity are hence likely to include intrinsic as well as extrinsic rewards. A cognitive view stresses the legitimacy that comes from adopting a common form of reference or definition of the situation" (Scott, 1995: 47).

Another institutional approach to legitimacy is that suggested by Suchman's (1995) typology of legitimacy. Suchman identifies three general categories of legitimacy; pragmatic, moral and structural. Pragmatic legitimacy rests on the "self interested calculations of an organization's most immediate audiences" (p. 578) and is directly related to material or economic interests. At its simplest level, pragmatic legitimacy is based "upon a sort of exchange legitimacy" (p. 578) in which social standing relates directly to superior access to resources. This version of legitimacy bears a strong resemblance to Dowling and Pfeffer's (1975) economic legitimacy and to Scott's version of technical legitimacy.

Moral legitimacy, similarly, corresponds to Dowling and Pfeffer's (1975) version of social legitimacy and to Scott's (1995) normative legitimacy. Moral legitimacy, for Suchman, "rests…on judgements about whether the activity is 'the right thing to do' " (p. 579). The emphasis on commonly held values an beliefs and shared assumptions about 'good' and 'bad' behavior are quite similar to both

Dowling and Pfeffer's (1975) social legitimacy and to legitimacy under Scott's (1995) normative pillar.

Suchman's third type, structural legitimacy, does not bear a close correspondence to any of the previous categories. This form of legitimacy focuses explicitly upon reliance on the *form* or structural characteristics of an organization to obtain social approval:

> "In this case audiences see the organization as valuable and worthy of support because its structural characteristics locate it within a morally favored taxonomic category" (p. 581).

Although Suchman does not explicitly say so, structural legitimacy suggests a form of social approval achieved through isomorphism. This type of legitimacy appears to be based almost exclusively on perceptions of familiarity with the form or organization and does not, therefore, provide any linkage with categories in previously described typologies.

A final taxonomy of legitimacy comes from Aldrich's (1999) organizational ecology framework. Aldrich describes three broad categories of legitimacy, each of which bear a close similarity to Scott's (1995) 'pillars' of institutional theory. Cognitive legitimacy, for Aldrich, operates at a symbolic level and seeks to "link new ventures to the past via symbolic language and behaviors" (p. 232). Regulatory legitimacy connects new organizational forms to existing laws and rules as well as co-opts government agencies as allies against competing populations. Aldrich's moral legitimacy corresponds roughly with Scott's normative pillar and is drawn directly from Suchman's construct. Moral legitimacy refers to norms and values shared between organizational actors and broader networks in the community or population of organizations.

Although Aldrich does not use the terms 'pragmatic' or 'economic' legitimacy, nor distinguish between 'technical' or 'institutional' forms of legitimation, a similar line of reasoning can be found in his construction of 'learning strategies'. This construct bears many similarities to 'economic legitimacy' or the approval that occurs as a result of superior economic performance. Learning strategies, Aldrich argues, provide social acceptability for new organizational forms by the production of dominant designs that foreclose other competitive forms or by the economic advantages that result from agreed upon standards or measures of performance within a population. Although Aldrich expressly denies that his construct of 'learning strategy' can be conflated to Suchman's 'pragmatic' legitimacy (p. 230), there are clear lines of similarity between the constructs.

Table 5.1 organizes these typologies of legitimacy on the basis of the rough correspondence between terms. It is useful, as well, to note the relationship between these broadly similar typologies of legitimacy and the conceptual model of field level governance mechanisms described in Chapter 2. That chapter presented the central argument of this dissertation; that new organizational forms or new templates of organizing are made possible by macro-level shifts in dominant mechanisms of governance or field level control. Table 1 suggests a logical connection between dominant modes of governance and types of legitimation. That is, fields in which market governance mechanisms predominate are more likely to emphasize economic or technical forms of legitimation. Similarly, fields dominated by modes of professional governance are likely to be more receptive to strategies of legitimacy based on normative appeals and efforts at legitimacy in highly regulative fields ought to focus on adherence to rules and legislation.

It is important to note, however, that the other forms of governance do not disappear when one mode is displaced by another. Indeed, the evidence from the previous chapter suggests that, at least during the transition, there is open competition between ideologies associated with different governance structures. For purposes of legitimation, therefore, even though a particular configuration of governance mechanisms might favor one legitimation type over another, the best overall strategy might well be to pursue multiple types of legitimacy simultaneously.

## Applying legitimation types to the data

General illustrations of each of these types of legitimacy can be observed in the struggle for emergence of MDPs in North America. The gradual erosion of professional norms about the appropriate template for organizing the production of legal services, for example, serves as a broad illustration of the erosion of 'cognitive' legitimacy. The appearance of a captive law firm in Canada, and subsequent legal recognition of MDPs in various North American jurisdictions demonstrates the delegitimation of the taken-for-granted assumption that only lawyers can own law firms and that only lawyers can provide legal services. Similarly, the creation of 'captive' law firms as a hybrid form of organization that spans traditional professional controls and emerging market controls is a useful illustration of an attempt at structural legitimacy. Although the external form of organization complied with the prevailing template of a traditional law firm, the unique connection between captive law firm and parent accounting firm provided a modest first step toward creating a multidisciplinary professional service product that included a legal component.

A broad-brush analysis reveals two primary approaches to legitimation or delegitimation of MDPs. Proponents of fully integrated MDPs emphasized economic or pragmatic arguments to justify their vision of the new organizational form. This was true not only for the strongest supporters of MDPs, i.e., the Big Five professional service firms, but was also true for global trade organizations and those within legal professional associations that supported a somewhat less integrated form of MDP. Each will be examined in turn.

The underlying emphasis on economic logic to justify MDPs used by the Big Five professional firms has already been demonstrated. The core argument of the Big Five professional service firms is best captured in the *Trebilcock Report* (Trebilcock and Csorgo, 1999), written at the request of the Big Five and which justified MDPs on the basis of a "consumer welfare" approach. The very parameters of the report outlined the fundamental economic focus to be taken in its analysis:

> "Charles River Associates (CRA) Canada has been commissioned by the Big Five professional service firms in Canada to prepare an evaluation of

> the economic advantages and disadvantages to clients of multi-disciplinary professional practices" (Trebilcock and Csorgo, 1999, p. 1).

An overriding theme in the balance of the document is that the perceived economic advantages of this new organizational form will clearly outweigh any normative concerns regarding conflicts of interest, client confidentiality and professional ethics. The report gives an assumptive primacy to economic issues, suggesting that once the consumer welfare benefits of the new organizational form have been achieved, resolution of the other concerns will follow:

> "In our view, regulation of the quality, cost, and performance of professional services, including various ethical rules pertaining to professional conduct, must find a justification within the market or contracting failure framework sketched above in order to satisfy a public interest (or as we would prefer to characterize it, consumer welfare) test" (Trebilcock and Csorgo, 1999: p. 11).

Moreover, the *Trebilcock Report* seeks to legitimate MDPs not only on the basis of economic advantages offered to *consumers* by the new organizational form, but also on the basis of economic benefits conferred on the legal profession. MDPs, the report suggests, will increase the market for legal services by creating a new market for combined professional services:

> "MDPs may result in the creation of new services, either through advances in quality or through advances in quality or through the introduction of wholly original forms of service. Where these lead to enhancements in the productivity of lawyers in an MDP context, e.g. through the acquisition of complementary skills, this is likely to lead to an increase rather than a decrease in the demand for lawyers" (Trebilcock and Csorgo, 1999, p. 13).

The balance of that section of the Report states that the increased revenues produced by MDPs may be used by law firms to defray the growing expense of technology which, once implemented, will provide even greater efficiencies and increased revenues for lawyers.

The ongoing theme of the Trebilcock report is that economic efficiencies of MDPs will, ultimately, cure all ills. The Big Five were remarkably consistent in this line of argument, repeating it, often *verbatim*, in arguments presented to other audiences. In representations to the Law Society of Alberta, for example, Doug Black, managing partner of Donahue Ernst & Young summarized the economic advantages of MDPs:

> "The impetus for the development of multidisciplinary practices is to provide better value for clients...This objective is in the public interest. We believe that being able to integrate the services of multidisciplinary professionals within one organizations should facilitate:
>
> (a) enhanced relationships with clients, and therefore a better understanding of their needs;
> (b) new, different, or in some instances better solutions for clients because of the interaction of professionals with different backgrounds;
> (c) cost savings for clients, because of less people working with the client, better lines of communication between professionals and better working relationships amongst professionals;
> (d) less client management time, because the client does not have to project manage various professionals involved in the tasks;
> (e) a more time responsive solution, because all professionals are working within the same culture and organization and therefore share the same client service objectives;
> (f) higher quality solutions for the client because all professionals will be working with the same client objectives, and in the future will be using common and consistent methodologies and processes..." (*Black Correspondence to Law Society of Alberta*, April 28, 1999, p. 1).

Black went on to promote the economic advantages of MDPs for the legal profession, suggesting that adoption of the new organizational form would "result in the creation of new services" and, ultimately "lead to an increase rather than a decrease in the demand for lawyers".

Similarly, in testimony before the American Bar Association's *Commission on Multidisciplinary Practice*, each of the representatives of the Big Five promoted the "expanded market opportunities" that would benefit adoptees of the new organizational form. Roger Page, for example, representing Deloitte & Touche, exuded:

> "I want to turn now to the expanded opportunities that could be available to lawyers in practice structures outside of today's traditional law firms...We already have a long history of regularly teaming professionals from different disciplines to work together and develop a relationship of

> trust and cooperation. Our clients have found that the collective expertise of professionals means more efficient, value added service and, eventually, more profitable firms" (Page Submission, ABA *Commission on Multidisciplinary Practice,* March 11, 1999, p. 4).

The foregoing justifications for MDPs are all based on a generalized perception or assumption that efficient production and delivery of services is desirable, proper and socially appropriate and that the economic rewards that will flow from MDPs provide a generalized legitimacy that transcends normative and regulative approbations. There is an inherent logic of resource exchange embedded in these assumptions and perceptions. The *quid pro quo* for the legal profession, in accepting the new organizational form, according to the logic presented by the Big Five, will be happier clients and richer members. Concerns about the long-term impact on the profession, or the public policy implications of adopting changes are 'washed out' in the transaction or supplanted by the promise of economic gain.

The same pragmatic legitimation strategy is observed in efforts by the World Trade Organization to promote MDPs. In a document titled *Background Note on Legal Services* prepared for the World Trade Organization by the Secretariat for the Council for Trade in Services (S/C/W/43 July 6, 1998) the Secretariat identifies "one stop shopping and access to high quality professional services for firms doing business cross-border" (§ 21) as major factors in removing professional restrictions against MDPs. The report identifies restrictions on the "legal form for the delivery of legal services" as constituting a "serious barrier to free and efficient trade in legal services" (§ 25). Removing such restrictions and endorsing MDPs, the Report concludes, would provide "economies of scale and considerable savings for clients, who can rely on a single firm for different professional services, increase in trade due to de-regulation and better and cheaper services as a consequence of enhanced competition" (§ 53).

The legitimacy strategies outlined in arguments by proponents of MDPs, including large accounting firms and global trade organizations, relate almost exclusively, to economic viability. The arguments rely on the assumption that the economic advantages represented by this new organizational form, not only will confer specific competitive advantages upon adoptees, but will also confer generalized competitive advantages on the profession. Implicit in their arguments are suggestions that broader social values within the professions have changed and made traditional assumptions of insulating professionals services from the influences of market competition somewhat obsolete. This is, in fact, the message contained in the conclusion of the World Trade Organization background document:

> "Professional organizations exist in most countries, and in some cases more than one professional organization exists in one country, especially when the legal profession is divided between different professionals (advocats, counselling lawyers, notaries, etc.), different geographic areas and different fields of the law...The restrictions [against MDPs] are often based on historical public policy grounds such as consumer protection, ensuring the quality of service and ensuring the independence of professionals. These, often misguided qualification requirements represent an insurmountable barrier to trade in legal services. Ironically, opening trade would, ultimately, provide protection for all the concerns that the barriers were instituted to protect" (World Trade Organization, *Background Note on Legal Services*, S/C/W/43 July 6, 1998, § 108).

Although proponents of MDPs rely heavily on pragmatic legitimacy to justify MDPs, they do not do so exclusively. Rather, there is an embedded assumption that by first addressing issues of economic efficiency, appropriate normative issues, such as consumer protection and public policy concerns, will follow. Nevertheless, pragmatic legitimacy occupies a privileged position in the assumptive hierarchy of MDP proponents and is thought to underpin or serve as a pre-condition to normative legitimacy.

The converse is true for opponents of MDPs. Opponents adopt arguments that use normative claims to legitimacy as the fundament for long-term pragmatic legitimacy. The opposition to MDPs by professional associations in law is based on historical arguments that insulating the profession from market influence has been effective in the past, as evidenced by the high earning potential and social status offered by a legal career, and will continue to do so in the future. In the words of a Bencher of the Law Society of Alberta, "good ethics makes for good business, in the long run" (Paul McLaughlin, interview, June, 2000). Resistance to MDPs by professional associations, thus, is something of a reflexive reaction to oppose anything suggestive of market influence by claiming potential damage to ethics, professionalism and public interests.

This line of argument is presented in the following excerpt, taken from a letter by David A. Ward, Q.C., of the Toronto firm Davies, Ward & Beck, who submitted a letter opposing MDPs to the *Futures Task Force of the Law Society of Upper Canada*. Ward begins his letter by challenging the assumptive primacy of pragmatic or economic efficiency presented by the Big Five. This should be reversed, he argues, so that the economic benefits of MDPs should only be of interest if it can be first demonstrated that will enhance the core values of the profession:

> "The fundamental question is whether MDPs practising law would be in the public interest. I believe the answer is that they will only be in the public interest if legal services to the public can be provided more or perhaps at least as efficiently:
> (a) without detracting from the essential characteristics and responsibilities of lawyers, and
> (b) without diluting other desirable standards of professional conduct and
> (c) without interfering with efficient professional regulation to ensure that the standards are maintained..." (*Ward Correspondence to Law Society of Upper Canada*, January 15, 1998, p. 1).

Ward's letter also, therefore, places professional *regulation* as well as professional values on a plane of higher primacy than any perceived economic benefits of MPDs. Ward also contests the assumption that legal services are not currently efficiently produced. He points out that lawyers have historically provided legal services for free to the indigent and suggests that accountants, who do not have this tradition, will proclaim efficiencies of MDPs that have been achieved at the expense of this important public service.

> "There is no evidence that legal services are not presently readily available and effectively delivered to the public. Lawyers have a tradition of providing *pro bono* legal services – accountants do not have the same tradition of providing *pro bono* services. In fact, Rule 222 of the [Chartered Accountants] *Firms Version of the Rules of Professional Conduct* prohibits such activity...perhaps the efficiencies they speak of will be derived from giving up this valuable service to the public" (*Ward*

> *Correspondence to Law Society of Upper Canada*, January 15, 1998, p. 2).

Ward concludes his letter with the observation that sound normative rules of professional conduct, which have evolved over time, form the basis of efficient and fair delivery of legal services. Such practices, he observes, "have served our members well in the past, and hopefully will continue to do so in the future" (*Ward Correspondence to Law Society of Upper Canada*, January 15, 1998, p. 4).

This initial overview, therefore, suggests two broad and distinct types of legitimation strategies. Proponents of MDPs base their strategy on the perceived economic benefits of the new organizational form. Although they acknowledge some self-interest in these assessments, ultimately all actors within the field, including clients, law firms and the legal profession, will benefit from the adoption of MDPs.

The assumptive primacy given to economic legitimation strategies by proponents of MDPs is consistent with a cognitive view of a field in which market based governance mechanisms are dominant. Recall that field level governance mechanisms refer to institutional frameworks (i.e., laws, norms and values and competitive relationships) that define structures of social control in an organizational field. A field dominated by market-based governance structures is primarily concerned with the creation of wealth through the maximization of economic efficiency of the firm. Under this framework, owners or shareholders of the firm are assumed to receive the primary benefit of economic efficiency and "residual benefits" move, secondarily, to the general public.

It is unsurprising, therefore, that actors who believe they are engaged in a field in which market mechanisms dominate (or will, eventually, come to dominate) attempt to legitimate their actions with appeals to economic efficiency. It is also unsurprising that opponents to MDPs reversed this logic. Professional associations adopt legitimation strategies that are consistent with an understanding of a field dominated by professional controls. Normative interests, issues of public accountability and the rhetoric of professionalism is given primacy on the assumption that appropriate economic benefits will follow.

**Table 5.2: Typologies of legitimacy amongst MDP opponents and proponents**

| | Primary Actors | Dominant Type of Legitimacy Used | Secondary Type of Legitimacy |
|---|---|---|---|
| Pro MDP | • Big Five<br>• WTO | Pragmatic ⇨ | Normative |
| Con MDP | • Professional Associations | Normative ⇨ | Pragmatic |

The foregoing analysis, however, reveals a fundamental weakness of typologies of legitimacy. Such categorizations are both static and suggest a degree of incommensurability. That is, they suggest that legitimacy exists as a property that is, somehow, independent of the primary actors and that does not change over time. Moreover, the breadth of categories of legitimacy suggested by the typologies denies the need for a more fine-grained analysis of legitimacy as a dynamic process involving actors, audiences and their mutual interaction. Typologies, thus, fail to offer sufficient analytical detail about *strategies* of legitimation based upon recurring patterns of organizational behavior. It is important, therefore, to link legitimacy types both to specific actors engaged in the MDP debate as well as to specific outcomes or goals identified by these actors as desirable. This requires one to ask additional questions about the process by which legitimacy is acquired. Specifically, one must ask, "legitimacy of *what*?", "to *whom*?" and "by what *means*". The balance of this chapter addresses each of these questions in turn.

### Legitimacy of What?

Typologies of legitimacy apply the construct uniformly to all aspects of an organization. Organizations, however, are complex constructs consisting of, among other things, a structure or form, internal managerial processes and external products (Pfeffer, 1981). One can conceive of a variety of situations in which legitimacy may not apply equally to all three of these organizational attributes. Tobacco companies, for example, possess legitimate organizational forms and practices, yet their product, cigarettes, are becoming increasingly suspect as a socially acceptable product. Conversely, the manufacturer Nike has both a legitimate form of organization and a legitimate commercial product but has been subject to normative sanctions, including consumer boycotts, for its overseas labor practices (Kostova, 1999). Amway, as a final example, is an organization that produces legitimate products through socially acceptable managerial practices but has been criticized for its organizational structure which bears a close similarity to illegitimate 'pyramid' schemes (Dordecht, 1988; Pratt, 2000).

MDPs have potential legitimacy difficulties with all three attributes. The formal structure, as has been shown, violates rules and regulations designed to maintain boundaries between professions. Similarly, the internal processes of MDPs, which place the objective disclosure functions of auditors in conflict with the subjective client centered focus of lawyers and management consultants, have been the subject of considerable ethical scrutiny. Finally, the product or outcome of MDPs, which involves a co-mingling of legal, consulting and audit services has been challenged as an "illegitimate hybrid of services that no one really wants" (New York State Bar Association, *Report of the Special Committee on Multidisciplinary Practice and the Legal Profession,* January 8, 1999: 113).

The legitimation strategies of primary actors engaged in the MDP process can also be differentiated by their respective emphasis on different organizational attributes. Pro-MDP actors focused their legitimation efforts, almost exclusively, on the product of MDPs while de-emphasizing both structural attributes and internal processes. Anti-MDP actors, by contrast, focus attention on both the form and internal processes and tend to de-emphasize the product (See Table 5.3). Each of these observations is detailed below.

**Table 5.3: Legitimation Strategies by Type and Organizational Attributes**

| | Primary Type of | Primary |
|---|---|---|

|  | **Legitimacy** | **Organizational Focus** |
|---|---|---|
| **Pro-MDP** | Pragmatic | Product |
| **Con-MDP** | Normative & Regulative | Form and Internal Managerial Processes |

The primary emphasis given by the Big Five to legitimating the *product* of MDPs rather than the form is evident from an examination of public statements made by, or on behalf of, these professional service firms regarding MDPs. Three public venues are most relevant: the *Trebilcock Report*, testimony before the American Bar Association's *Commission on Multidisciplinary Practice* and statements made by representatives of the Big Five during public hearings before the Securities Exchange Commission. Each is discussed in turn.

Contextual analysis of the *Trebilcock Report* reveals a fundamental focus on organizational outcomes or the products of MDPs over issues of organizational form and internal processes. Although the authors of the report devote considerable space to outlining the successful diffusion of the new organizational form across non-North American jurisdictions, considerably more space is devoted to detailing the demand amongst various consumers for the product of MDPs, to describing the reasons why a multidisciplinary service product is more suitable to contemporary business practice and to evaluating the relative merits of the product in comparison to potential problems with internal practices and organizational form.

To measure the relative emphasis devoted to legitimating the product, rather than the form or internal processes of MDPs, three categories of words, each relating to product, form or managerial process, were constructed. The first category, in addition to the root term "product", included "consumer" as an associated concept (Ruef, 1999). Alternative signifiers included the following terms: outcome, produce, client and customer. The second category, in addition to the root term "form" included "structure" as an associated concept and the following alternative signifiers: design, framework, anatomy. The third category, in addition to the root term "procedure" included "process" and "management" as associated concepts and included the following alternative signifiers: practice(s), system, protocol, operation and treatment.

Each of the terms (including alternate derivations, plural forms etc.) were searched within the text of the *Trebilcock Report* and the frequency of various terms in each category was compiled. The results of the frequency counts are shown in Table 5.4, below. The results demonstrate an unequivocal emphasis of terms associated with the product or outcome of multidisciplinary firms. The total number of "product" references exceed that of the references to "form" and "process" combined.

**Table 5.4: Frequency of References to "Product", "Form" and "Process" in Trebilcock Report on Multidisciplinary Practice**

| Term Category | Number of References |
|---|---|
| **Product** | **55** |
| **Form** | **13** |
| **Process** | **11** |

The emphasis on legitimating the product of MDPs by Big Five firms is reinforced though an examination of the testimony of Big Five representatives appearing before the American Bar Association's *Commission on Multidisciplinary Practice*. In responding to criticisms about the potential for conflict of interest and confidentiality violations caused by the structure of MDPs, Roger Page, National Director of Tax Practice for Deloitte & Touche, argued that the popularity of the product of multidisciplinary firms ought to outweigh any concerns about potential structural problems with the new organizational form:

> "The marketplace has long accepted our procedures for maintaining effective firewalls as evidenced by the fact that we continue to serve major competitors in various industries…I can think of no better market place validation of MDPs than the popularity of its product among these very sophisticated users of professional services" (Page Testimony, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., March 11, 1999: 3).

Page went on to suggest that adopting a multidisciplinary approach might, ultimately, enhance the quality of the product of law firms:

> "Lawyers at law firms regularly complain that their work is narrowly focused and crisis driven and that they are only called upon by clients to resolve disputes or to help close a deal. That is not the experience of professionals in our firm. We work closely with clients to develop innovative products and high quality solutions to complex problems…" (Page Testimony, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., March 11, 1999: 4).

The logic of Page's argument is twofold. In the first excerpt he suggests that the popularity of the MDP product with clients is sufficient to 'cure' any ethical problems that may arise from the unique structure or internal design of the organization. In the second excerpt he criticizes the organizational product of lawyers, suggesting that, by adopting a multidisciplinary form, lawyers will not only improve their organizational product, but they will also improve the quality of their client relationships. In either case, the primary focus is on the product as a means of legitimation.

In addition to emphasizing the product of MDPs, the legitimation strategy of MDP proponents also included a deliberate de-emphasis of organizational form. In response to concerns about ethical problems inherent in housing auditors and lawyers in the same firm, representatives of the Big Five firms argued that individuals were the only appropriate unit of analysis and that the form or structure of organization was irrelevant. Sam DiPiazza, for example, the Managing Partner for tax services for the Americas region for PricewaterhouseCoopers, told the ABA *Commission on Multidisciplinary Practice*:

> "It is the individual practitioner who is bound by the ethics obligations, and it is the individual who owes the duty of loyalty to the client. We believe that all lawyers who hold themselves out as engaged in the practice of law should be subject to the rules and disciplines of the bar regardless of the nature or ownership structures of the organizations for which they happen to work" (DiPiazza Testimony, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., March 11, 1998: 1).

The Big Five firms, thus, sought to distract attention away from the ethical concerns about the organizational form by making a conceptual distinction between the organization and individual professionals within the organization.

Richard Spivak, representing Arthur Andersen at the American Bar Association *Commission on Multidisciplinary Practice*, argued that while ethical violations can be attributed to individuals, they couldn't be attributed to organizations or to organizational form. Spivak also made a distinction about the appropriate means of social control for individuals and organizations, arguing that while it is appropriate for the state to regulate the ethics of individual professionals, only the market ought to determine the behavior of organizations:

> "In my view, state regulation should remain focused on the individual lawyer. That is not to suggest that an MDP would not be regulated. Like a law firm, an integrated services firm would continue to be regulated by the external forces of the market" (Spivak Submission, ABA *Commission on Multidisciplinary Practice*, Chicago, March 12, 1999: 4-5).

In the worldview of proponents of MDPs, thus, individual professionals and ethical issues appear to occupy a sphere that is conceptually separate from the organizations in which they work and the services produced in those organizations. This line of reasoning suggests that the representatives of the Big Five firms maintained a cognitive distinction between the product of multidisciplinary organizations (which was legitimate because of intense consumer demand) and the internal practices of multidisciplinary firms (where ethical problems could be attributed to a few individuals rather than any problem inherent in the form or in the structure of internal organizational practices).

The testimony of representatives of the Big Five firms before the US Securities Exchange Commission *Public Hearings on Auditor Indepe*ndence underscored the primary focus placed by the Big Five on legitimating the product of MDPs. Representatives of four of the Big five firms appeared before the Commission (Deloitte & Touche, Arthur Andersen, KPMG and Ernst & Young). Each representative cited the crucial role of client demand for "new and sophisticated professional service products" as a critical justification for permitting their firms to engage in a broad range of multidisciplinary services.

Joseph Berardino, on behalf of Arthur Andersen, observed that the expansion to non-audit services was inspired by the need to perform better audits. MDPs, he argued, are made legitimate, by the increasing demand amongst audit clients for complex and sophisticated business solutions:

> "We are a product driven organization. Let me give you…maybe it would help if I give a sort of slice of life example. We're in doing an audit, and we find a problem in the disbursements area. Controls aren't what they should be. The system's broken. The security codes are not appropriate. We have an obligation to, first of all, identify that and bring it to the client's attention. And let's say we have our technology auditor who finds that problem. That's very valuable to our clients because they want to improve that system. They might then say, "If your so smart that you found this problem, help me fix it."
>
> Commissioner Unger: "Right"
>
> Mr. Berardino: "That's how all these practices started. It wasn't because our predecessors were geniuses and said, we need more revenue. Its because our clients said "Fix that problem". Its product driven. And we think that's in the public interest" (Berardino Testimony, US SEC *Public Hearings on Auditor Independence*, September 20, 2000: 28).

The explicit logic of this line of reasoning is that the legitimacy of the organizational form is pre-determined by client demand for multidisciplinary products. If the product is legitimate, then everything that flows from that product is also legitimate. The demand underpins and justifies everything that follows, including internal organizational practices and firm structure or form. The 'halo effect' of a valuable product, in this worldview, conflates client interest with public interest so that satisfying client demand is a legitimate public service.

Representatives of the Big Five firms attempted to bolster the legitimacy of the product or outcome of multidisciplinary firms by pointing out the absence of any definitive evidence of client dissatisfaction with their product or any case in which the practice of mixing professional services had diminished audit quality. Bob Garland, a Deloitte & Touche partner in charge of audit for US services, pointed out the lack of a 'smoking gun' that might tarnish the legitimacy of multidisciplinary services:

> "I believe that there is no evidence that a broad scope of services has an adverse effect on audit quality. We've been studying this issue as a profession…I think the SEC has looked at this for over 40 years now, and no one, to my knowledge has ever produced any evidence suggesting or

> proving that that's the case. My own personal experience over the last three decades in fact has caused me to conclude just the opposite. I believe and I really believe that a broad scope of services enhances audit quality" (Garland Testimony, US SEC, *Public Hearings on Auditor Independence*, July 26, 2000: 53).

Again, the substance of their legitimacy claim flows directly from the product and from client's satisfaction with the product. Client satisfaction with the organizational outcome serves to legitimate both the form and the internal process of production.

Opponents of MDPs, by contrast, focused their attention on the organizational form and potential problems with internal processes of production in their efforts to de-legitimate MDPs. A number of variants of this strategy can be observed. The US Securities Exchange Commission, for example, concentrated on what they described as "inherent incompatibilities" between the roles of auditors and lawyers in a single organization. The following excerpt, drawn from the Commission's *Final Rule Revision of Auditor's Independence Requirements* effectively illustrates this view:

> "We believe that there is a fundamental conflict between the role of an independent auditor and that of an attorney. The auditor's charge is to examine objectively and report, regardless of the impact on the client, while the attorney's fundamental duty is to advance the client's interests. As discussed in the Proposing Release at greater length, existing regulations, the US Supreme Court and professional legal organizations have deemed it inconsistent with the concept of auditor independence for an accountant to provide legal services to an audit client" (US SEC, *Final Rule Revision of Auditor's Independence Requirements*, February 12, 2001: p. 57).

The SEC also rejected proposals by the Big Five to use internal organizational structures, such as 'firewalls' or 'Chinese Walls', designed to isolate auditors and lawyers to overcome the inherent conflict associated with having lawyers and accountants working in the same organization. The SEC rejected the proposal, pointing out that the *potential* for client harm was sufficient:

> "Some commenters suggested that safeguards such as firewalls, could prevent or cure any independence problems that might arise by virtue of

> an accountant providing legal services to an audit client. Recently the Commission on Multidisciplinary Practice of the American Bar Association considered whether firewalls would address sufficient issues that might arise if a law firm were to provide both legal and other services. That Commission rejected the firewall approach stating "We explicitly recognize the incompatibility of legal and audit services. We do not believe that a single entity should be allowed to provide both legal and audit services to the same client." In light of current regulations and the American Bar Association Report, we have determined not to adopt a firewall approach" (US SEC, *Final Rule Revision of Auditor's Independence*, February, 2001: 57).

The SEC also emphatically rejected arguments from the Big Five that client demand for a multidisciplinary product justified overlooking the potential for client harm that might occur in the new organizational form. They observed that the Big Five offered no empirical data in support of their claims of client demand and argued that, because appearances and perceptions influence investor confidence, mere potential for harm was sufficient to justify restrictions on the organizational form:

> "The Commission's independence requirements have always included consideration of investor perceptions. Many foreign countries have similar requirements. A companies analysis of the independence requirements of eleven countries concluded, 'with the possible exception of Switzerland, most of the countries stress both the appearance and the fact of independence. In Canada, Rules of Professional Conduct require that the auditor be free of influence that would impair its judgment' or which, in the view or a reasonable observer, would impair professional judgment or objectivity. David Brown, of the Ontario Securities Commission, testified that the importance of perception of auditor independence, 'cannot be overstated' " (US SEC, *Final Rule Revision of Auditor's Independence*, February, 2001: 57).

The SEC's rejection of MDPs is based on adverse public perceptions of the organizational form. Their de-legitimation strategy places primary emphasis on categorical conflicts in occupational roles within the organization. This 'inherent' conflict, in the SEC's view, made the form illegitimate, in a normative sense and effectively overruled any claims to legitimacy based on client demand. This demonstrates the assumptive primacy given to perceived legitimacy of the organizational form, or external appearance of the new organization, by the SEC, and its link to normative and regulative legitimacy.

Although legal professional associations also accepted the assumption of an inherent incompatibility between lawyers and accountants in the internal processes of MDPs, this was not their only focus. Professional associations in law sought to de-legitimate MDPs on the basis that the organizational structure or form, itself, offended sacred professional practices. Objectors pointed specifically to the deleterious effects the new organizational form would have on 'solicitor-client privilege'. Placing lawyers and non-lawyers in close proximity, they argued, was an internal organizational practice that would eventually destroy this sacred professional concept.

The doctrine of privilege has developed historically through the common law. Communications between a lawyer and his or her client cannot be disclosed in subsequent criminal or civil hearings. Such communications are confidential or 'privileged'. The doctrine evolved in an effort to ensure free and open discussions between lawyers and their clients. The rationale for the rule is that only through open disclosure by his or her client can a lawyer be able to prepare the best possible defense. Privilege is lost, however, if a third party who is not a lawyer is privy to the communication between lawyer and client. The doctrine presumes, and encourages, a high degree of individual intimacy in relations between lawyers and their clients.

In their efforts to attack the legitimacy of MDPs, professional associations argued that the organizational structure of MDPs, which places lawyers in close working proximity with non-lawyers, will threaten individual claims of privilege by creating both the perception and the fact of access to privileged communications by non-lawyers. Over time, the associations argued, the close working arrangements between lawyers and non-lawyers would entirely erode the common law construct as judges will become increasingly reluctant to grant it in multidisciplinary contexts.

The following excerpt, taken from the *Report to Convocation of the Law Society of Upper Canada by the Futures Task Force Working Group* on MDPs effectively summarizes this position:

> "Quite obviously, in a fully integrated MDP made up of lawyers and accountants, legal advice that is otherwise privileged (but not protected on the basis of litigation privilege) will routinely and carelessly, or even unwittingly but deliberately, be communicated to non-lawyers, thereby undermining privilege" (Law society of Upper Canada, *Report to Convocation of the Law Society of Upper Canada by the Futures Task Force Working Group*, 1998, § 104).

In support of their concerns professional associations[1] routinely cited the highly publicized lawsuit against KPMG in which the firm was unable to contain confidential client information within a definable working team of employees through the use of 'Chinese walls' or internal organizational structures and routines (*Prince Jefri Bolkiah v. KPMG*, 1998). The legal body, in that case, suggested that the size and complexity of the professional service firm, and the mixture of lawyers and non-lawyers in multidisciplinary teams, made the protection of confidential information a near impossibility:

> "Even in the financial service industry, good practice requires there to be established institutional arrangements to protect the flow of information between separate departments...When the number of personnel is taken into account, together with the fact that the teams engaged on Project Lucy and Project Gemma each had a rotating membership, involving far more personnel than were working on the project at any one time, so that individuals may have joined from and returned to other projects, the difficulty of enforcing confidentiality or preventing the unwitting disclosure of information is very great. It is one thing, for example, to separate the insolvency, audit, taxation and forensic departments from one another and erect Chinese Walls between them. Such departments often work from different offices and there may be relatively little movement of personnel between them. But it is quite another to attempt to place an information barrier between members all of whom are drawn from the same department and have been accustomed to work with one another. I would expect this to be particularly difficult where the department is engaged in the provision of litigation support services and there is evidence to confirm this. Forensic accountancy is said to be an area in which new and unusual problems frequently arise and partners and managers are

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[1] Associations included the Law Society of Alberta, Law Society of Upper Canada, Law Society of British Columbia, American Bar Association, State Bar Association of New York and others.

> accustomed to share information and expertise" (*Prince Jefri Bolkiah v. KPMG*, 1998: 228-9).

The legal decision was used by professional associations to question the ability of the organizational structure of MDPs, which openly touted the synergistic advantages of sharing knowledge internally, to protect the historic commitment of the legal profession to protect confidential information and to preserve solicitor client privilege. A large, heteronomous professional organization, they argued, was structurally incapable of providing such safeguards. The form, itself, was fundamentally flawed and, therefore, illegitimate.

A second line of attack on the legitimacy of the multidisciplinary organizational form drew on the long history of assumed conflict between professional and bureaucratic work forms. MDPs, argued opponents, necessarily implied bureaucratic controls which would place non-lawyers and non-professionals in control of lawyers' work. This structure was, therefore, illegitimate, because it would impair the professional discretion lawyers were accustomed to under traditional work arrangements. The organizational form of MDPs was illegitimate because it threatened the individual professional autonomy of lawyers. Financial or other bureaucratic pressures might influence professional decisions and, ultimately, compromise ethics.

Robert L. Ostertag, past president of the New York State Bar Association and adjunct professor of law at Fordham University outlined this argument in his written submission before the American Bar Association *Commission on Multidisciplinary Practice*:

> "What makes anyone believe that when a lawyer practicing within a multidisciplinary firm setting is instructed by his or her non-lawyer supervisor to assume a legal position that he or she knows is not in his or her client's best interests, but is, in fact, in the best interests of his or her supervisor, or the employing multidisciplinary firm, or others involved in the transaction, that he or she will do as he or she is doing *right now* and that he or she will not do as he or she is directed to do in deference to his or her continued employment; particularly if the lawyer has children in college, or who are about to be enrolled or has economic concerns…this is not fairyland. We're talking about the real world and real people, subordinate in rank, who have economic needs of their own…"(Ostertag

> Submission, ABA *Commission on Multidisciplinary Practice*, Cleveland Ohio, October 9, 1999: 3).

Terry Cone, counsel to a New York law firm (Cleary, Gottleib, Steen and Hamilton) and the C.V. Starr Professor of Law at New York University articulated more specific concerns. Resources and economic incentives within an MDP, he argued, would necessarily place pressure on lawyers' professional judgement:

> "In an MDP controlled by non-lawyers, ultimate management would be in the hands of non-lawyers more likely to be concerned with economic performance by the MDP than with interpretations of legal professional rules made in the best interests of the client. It would, therefore, be surprising, as these rules were interpreted from time to time by lawyers in the MDP, if the lawyers were uninfluenced by the economic concerns of non-lawyers in positions of ultimate control. Accordingly, it seems reasonable to expect that there would be an incentive for the lawyers in an MDP to interpret the legal rules of professional ethics in a manner most consistent with the interests of management comprising non-lawyers, as contrasted with the best interests of the client" (Cone Submissions, ABA *Commission on Multidisciplinary Practice*, Chicago, March 12, 1999: 2).

A variety of related arguments were raised by opponents, including claims that the raising and allocation of firm capital and the distribution of resources within the firm would be done by non-lawyers which might reduce the capacity, for example, to identify conflicts of interest, participate in *pro bono* legal work or to promote in-house ethical training. These arguments carry a common theme: the organizational structure of an MDP is inherently deficient because placing non-lawyers in control of lawyers threatens the moral legitimacy of legal work. To bolster this line of argument, opponents of MDPs raise the specter of bureaucratic conflict with professional values.

In sum, in their attempt to de-legitimate MDPs, opponents of multidisciplinary practices focused primarily on the external form of MDPs and potential problems in internal managerial practices associated with the form. Their emphasis on form was accompanied by an argument that the organizational structure of multidisciplinary firms, and internal practices that would necessarily evolve as a result of having lawyers in close proximity with non-lawyers, would undermine the moral legitimacy of the profession.

Proponents of MDPs, by contrast, focused primarily on the product of multidisciplinary practices in their efforts to legitimate the new organizational form. Their emphasis on product was accompanied by an argument that client demand and the benefits that would flow from this pragmatic legitimacy would ultimately compensate for any potential damage to moral legitimacy.

## Legitimacy to Whom?

A second underdeveloped aspect of legitimacy is the identification of those actors within an organizational field whose approval is a pre-condition to widespread acceptance of a new organization's form, function or product. That is, few studies of legitimacy address the question, "from whom is legitimacy being sought?" Analyzing this question involves two stages. The first stage is to identify those constituencies within an organizational field that have the capacity to confer legitimacy or whose approval is essential in the process of achieving legitimacy. We must, therefore, identify distinct 'audiences' for legitimation strategies. The second stage is to determine whether legitimation strategies pursued by those actors who seek legitimacy varies when dealing with different audiences.

The theoretical constructs of 'governance mechanisms' provide a useful organizing device for identifying potential constituencies. The state, for example, controls critical resources directly, through the awarding of contracts and grants, but also indirectly, by influencing the transfer of resources with laws and rules. The marketplace, similarly, can confer legitimacy either by the direct actions of investors in the financial community or through the approval of consumers who endorse a particular organization by purchasing its product (or, conversely, reject an organization by organizing a boycott of that product). Professional associations, as we have seen, also play an important role as a legitimating audience. Foremost, professional associations have considerable normative influence over their members. More significantly, perhaps, professional associations offer a venue in which actors within the profession can legitimate their actions *to themselves* (Greenwood, Suddaby and Hinings, 2001). This internal legitimation occurs both narrowly, by focusing on regional or local professional associations within a single profession, or broadly, by influencing the opinion of national and international professional associations as well as neighboring professions.

The initial categorization of state, market and professions as legitimating audiences or constituencies is, however, too broad. The state is not a homogenous actor, but, rather, a complex of actors, each pursuing different and sometimes contradictory agendas regarding MDPs. Similarly, the notion of 'consumer', which is a subcategory of the 'market', can be classified into large corporate consumers of professional services and individuals. Finally, as demonstrated above, professional associations vary on a number of dimensions including substantive discipline, geographical scope and demographic characteristics of members.

The remainder of this section will consider, in turn, a general audience category of either market, state or professional. For each part I begin by identifying distinct sub-communities of audiences important to the legitimation of MDPs. The discussion will conclude with an analysis of the legitimation interactions between actors promoting or opposing MDPs and significant audiences in that category, with particular attention paid to the types of legitimation used for each audience.

### The State

Three distinct sub-communities of legitimating audiences can be identified within the state; capital markets regulators such as the US Securities Exchange Commission and the Ontario Securities Exchange Commission, government departments concerned with regulating inter-jurisdictional trade, and governmental departments with direct regulatory authority over professions and occupations. Each will be discussed in turn.

Capital market regulators were aggressively critical of MDPs. The notion of mixing audit functions with consulting services and legal services was problematic for these regulators because of fears that the subjective focus of consultants and lawyers and their close identification with their client would impair the auditor's public duty to report objectively on the financial affairs of audit clients. Actors in this group were suspicious that the existence of such firms would undermine the credibility of audit reports in the investment community and, ultimately, erode confidence in the entire financial market system. Echoing the concerns of US Securities Exchange Commission Chairman Arthur Levitt, the Chair of the Ontario Securities Commission, David Brown, expressed a "growing concern about the real and perceived threat to the capital market system posed by MDPs" (Brown, *Speech to Business Leaders' Luncheon of the Institute of Chartered Accountants of Ontario*, June 8, 1999).

It is important to note, however, that capital markets agents such as the securities regulators were aggressive in their efforts to *de*-legitimate MDPs. That is, in addition to providing an essential *audience* for legitimating efforts, capital market regulators were also critical *actors* that actively tried to undermine the legitimation efforts of multidisciplinary proponents. They were, in a sense, an audience but were not a passive audience; on the contrary they were a very hostile audience. Before describing how proponents of MDPs attempted to deal with this hostility, it is necessary to first describe their actions to de-legitimate the new organizational form.

Capital market regulators played an aggressive and controversial role in their attacks on multidisciplinary practice in general and, more specifically, in their aggressive stance toward the Big Five. Their delegitimation strategy consisted of a two-pronged attack against Big Five firms; first, they used public communications to attack the moral legitimacy of MDPs and they used new rules and regulations to reinforce the regulative illegitimacy of MDPs.

The public campaign by securities regulators began with a series of speeches to targeted audiences given by representatives of the Ontario Securities Commission and the US Securities Commission that denounced the expansion of non-audit services by the Big Five firms. Representatives of the Ontario Securities Commission, for example, delivered variants of the same speech to representatives of the Toronto Stock Exchange and Canadian Financial Community on November 3, 1998, to the Institute of Chartered Accountants of Ontario on June 8, 1999 and to corporate lawyers in Toronto on July 15, 1999. Members of the US Securities Exchange Commission delivered speeches attacking the expansion of non-audit services to the New York City Corporate Bar Association on October 1, 1999, to the Securities Regulation Institute on January 27, 2000 and to members of the investment community at New York University on April 1, 2000. Both regulatory agencies made the texts of their speeches publicly available on their respective websites and issued press releases that included content summaries of the speeches.

The public speeches employed a common reliance on moral legitimacy to attack the practice of combining audit and non-audit services, particularly legal services, in the same organization. Combining services, they argued, "threatens public confidence in the integrity of our capital markets" (Norman Johnson, Director of Enforcement of US Securities Exchange Commission, Speech to New York Corporate Bar Association, October 1, 1999). MDPs were also characterized as presenting a threat to national identity by undermining the premier status enjoyed by "US corporations and US stock markets in the global financial community" (Arthur Levitt, Chair of US Securities Exchange Commission, Speech at New York University, April 1, 2000). Accountants in the Big Five firms were accused of having abandoned their professional ideals and standards and of ignoring individual characteristics of "honesty, integrity, courage and character" (Lynn Turner, Chief Accountant of US Securities and Exchange Commission, Speech to the Securities Regulation Institute, January 27, 2000).

The Chief Accountant of the Securities Exchange Commission made a highly emotional appeal to the historical traditions of "professional conscience" of accountants in persuading them to reject MDPs:

> "The question of independence was asked of a representative of the accounting profession at Senate Hearings when the Securities Laws were first enacted in 1933. When asked by a Senator if there was any relationship between corporate controllers and their auditors, Colonel A.H. Carter, President of the New York State Society of CPAs at the time replied, "None at all. We audit the controllers." The Senator then asked,

> "Who audits you?" to which Colonel Carter replied, "Our *conscience*" (Turner, *Speech to the Securities Regulation Institute*, January 27, 2000).

Turner was making a highly sentimental appeal to his audience on the basis of a characterization of moral legitimacy. Those accountants who endorse MDPs, according to the argument, have abandoned their moral base founded in the tradition of their profession. The appeal to moral legitimacy is based in equal part on sentimentality, tradition and individual conscience.

The US Security Exchange Commission's publicity campaign against the Big Five intensified with the release of the results of an independent investigation into conflict of interest violations against PricewaterhouseCoopers. The final report, issued in January of 2000, condemned internal ethical procedures at the Big Five firm, citing a myriad of individual violations and significant "structural and cultural" problems within the firm that "threatened auditor independence and objectivity" (Fardella, Hollander-Blumoff, Fliescher, Fukayama and Klosterman, 2000).

The results of the investigation received widespread publicity. Although few of the 8,064 ethical violations identified by the independent investigation related directly to the firm's multidisciplinary activities, the results of the investigation were widely cited in the popular business press and created a lasting impression of "serious structural and cultural problems at PricewaterhouseCoopers relating to professional ethics" (McNamee, Dwyer and Schmitt, 2000: 157). PricewaterhouseCoopers was so concerned about the public impact of the allegations it commissioned a public opinion firm to measure the impact of the investigation on the opinion of significant clients (McNamee, 2000).

The investigation was also widely cited by professional legal associations as they examined the viability of MDPs in the legal profession. The results were used to illustrate the inherent "structural and cultural flaw" in having accountants and lawyers in the same organization (Fox Submission, ABA *Commission on Multidisciplinary Practice*, February 12, 2000). In Alberta, a Bencher of the Law Society of Alberta was so influenced by a newspaper account of the

PricewaterhouseCoopers investigation that she decided to defer her intention to vote in favor of MDPs:

> "I was fully prepared to support the motion [in favor of establishing regulations that allow MDPs in Alberta] today and, then, this morning I read this article in the Globe and Mail. The article referred to over eith thousand ethical violations at a Big Five firm. The article also said…[reads from article]. Given this state of affairs and the very real potential for harm to clients I would like to defer the straw vote today until I have more information" (Bencher, *Comment made During Bencher's Hearing on Multidisciplinary Practice*, Law Society of Alberta, January 31, 2000).

The underlying theme of the de-legitimating attack on MDPs conducted by the SEC, and others, was to attack the moral authority of Big Five professional service firms. This theme was effectively translated to the popular business press. A Business Week article described the struggle between the SEC and Big Five firms as a "morality play". The same article referred to SEC Chairman Arthur Levitt as engaging in a "crusade" against the "power and greed" of the Big Five (McNamee, Dwyer and Schmitt, 2000).

An article in the Wall Street Journal used similar terms, including "crusade" and "morality" in describing Chairman Levitt as a quixotic individual involved in a highly idealistic, if not somewhat futile, fight against powerful 'corporate' actors (Macdonald, 2000: B8). The affective tone conveyed by the use of such terms effectively created a mood of moral approbation, similar to the normative concerns expressed by SEC representatives in their public speeches. The effect of these, and related, articles was to cast significant moral aspersion on the motivations and actions of the Big Five firms' pursuit of multidisciplinary practice.

Securities regulators also used regulative legitimacy in their fight against MDPs. Speeches delivered by members of the Ontario Securities Commission to accountants and accounting professional associations, shortly after the establishment of Donahue Ernst & Young, contained a thinly veiled threat of new rules to contain the disciplinary expansion of the Big Five. In a speech to the Institute of Chartered Accountants of Ontario, Ontario Securities Commission

Chair, David Brown, reminded the professional body that, although they were technically a self-regulating organization (SRO), the residual power to control them rested within the authority of his branch of the provincial government and, unless they managed to control the Big Five, the Ontario Securities Commission would do it for them:

> "self regulation leverages industry experience and expertise and increases the resources available to effect compliance. But it works effectively only when the SRO is seen to be carrying on its mandate vigorously. Failure to do so ultimately forces the senior regulator, the OSC, to intervene to protect the public interest" (David Brown, Speech to the Institute of Chartered Accountants of Ontario, June 8, 1999).

Brown went on to suggest that the Institute seek from the government the power to regulate firms rather than individual professionals in order to get the regulatory authority to "bring to heel" large, international professional service firms.

The US Securities Exchange Commission, by contrast, actually exercised its rule making authority. It began by proposing new rules regarding auditor independence that would severely constrain the range of multidisciplinary services offered by the Big Five. Although the new rules on auditor independence fit the primary strategy of the Securities Exchange Commission to delegitimate MDPs through regulation, they also used the new rules as an opportunity to enhance the media campaign against the Big Five. For the first time in the rule-making history of the Commission, hearings on the new rules were open to the public. The Commission held the hearings at several locations throughout the US. In total, the Commission received and reviewed over three thousand letters and heard from over a hundred witnesses who provided thirty five hours of oral testimony. Transcripts of the hearings were made available to the public and daily press releases, summarizing the testimony, were provided to the press.

Big Five firms engaged in a variety of efforts to deflect the adverse publicity generated by the Securities Exchange Commission. Three of the Big Five firms (KPMG, Arthur Andersen and Deloitte Touche) joined with the American Institute of Certified Public Accountants to publicly threaten legal action against the SEC and, although legal action was never pursued, the firms stirred a great deal of media attention by hiring prominent New York lawyer David Boijes, made famous by his involvement in the Microsoft anti-trust suit (McNamee, Dwyer and Schmitt, 2000).

The accounting firms also mounted a very powerful political campaign against Arthur Levitt, attempting to overrule the authority of the Security Exchange Commission by appealing to federal politicians. Within four weeks of the SEC's announcement of new rules on auditor independence, forty-six members of the US House of Representatives and Senate wrote to the Securities Exchange Commission to express their concern about the propriety of the new rules (McNamee, Dwyer and Schmitt, 2000).

The Big Five also appealed directly to the Securities Exchange Commission, appearing before the rule making committee and engaging in "intense negotiations behind the scenes" (McNamee, 2000).[2] Representatives of the Big Five appealed, almost exclusively, to pragmatic legitimacy in their arguments, re-stating arguments of client demand and economic efficiency mandated such organizations.

The Big Five accounting firms also offered new versions of the pragmatic logic, suggesting, for example, that MDPs were essential to maintaining the long-term viability of the accounting profession. In order to attract new recruits to the profession, Stephen Butler of KPMG argued, firms must be able to provide a wider variety of stimulating career paths beyond the traditional audit:

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[2] Accounts of the negotiations, reported in *Businessweek*, demonstrate the degree of intensity of the background negotiations. McNamee (2000: 61) describes the neogitations as follows: "On the evening of November 13, just 40 hours before the SEC was to vote on the new rules, Levitt and his negotiators met in the SEC's Washington office with the CEOs of Arthur Andersen and Deloitte & Touche, tow of the three firms battling with the SEC. The heads of KPMG and the AICPA were on the speakerphone. After nearly two hours of discussion, the Big Five executives retired to a nearby room for a 45 minute caucus. When they returned they told Levitt they couldn't accept his deal. Around 8:15 p.m., eager to catch the last shuttle back to New York, the executives left. "Here's my home phne number," Levitt told them. "Call me if you change your minds." No one did. The net morning, though, Joseph Berardino, head of Andersen's consulting practice picked up the phone. Without a deal, he and his colleagues knew, the SEC would impose its original plan to ban auditors from installing IT systems for clients. And the political climate had changed. The three firms had fought to delay any SEC action until next year, when a GOP congress, perhaps with President Bush, could force the SEC to back down. But GOP losses on November 7 and the ambiguous Presidential outcome made that strategy dicey. After six furious hours of phone calls, the deal was done."

> " [Without MDPs] The best and the brightest minds, looking at multiple opportunities as solution providers to leading edge businesses would view auditing firms as a stagnant professional environment, little more than an extension of the regulatory enforcement apparatus. And, candidly, I don't know how I'd argue with them, because I know I won't work in that environment" (Butler Testimony, SEC *Public Hearings on Auditor Independence*, September 21, 2000).

By linking their goal of fully integrated MDPs to the larger 'professional project' of accountancy, Big Five representatives hoped to garner greater sympathy with the regulators.

A second sub-category of state audience for MDP legitimation involves those government agents or departments interested in promoting inter-jurisdictional trade. Responding, largely, to pressure from global trade authorities and federal legislation resulting from international trade agreements, these state actors have adopted a generally favorable stance toward intergration of professional services in multidisciplinary practice.

In Canada, the authority for promoting interjurisdictional trade derives from the Agreement on Internal Trade, which came into effect on July 1, 1995. Representatives from each provincial government form a committee (the Committee on Internal Trade) that meets regularly to examine perceived barriers to trade internally between provinces. The United States has a variety of comparable committees devoted to removing barriers to trade, both internally and externally.

Collectively these committees and departments provide a welcoming audience for MDPs. Under pressure to implement free trade in global services, this subset of state regulatory authority is generally receptive to the suggestion of new organizational structures that promote the mobility of individual professionals across geographic and disciplinary boundaries and which promote the free flow of services across those boundaries.

This was clearly the intended audience for the announcement, on April 6, 2000, by "eight leading professional institutes around the world" of the creation of a "new global business professional designation" (American Institute of Certified Professional Accountants, April 6, 2000). A primary objective of the proposal was to create a professional designation that would have international recognition and acceptance and that would serve the growing multidisciplinary needs of international clientele. The new designation would:

> "enable professionals from a wide range of disciplines to build on their ethical standards, traditional skills and expertise, helping them to provide a broader range of globally relevant services to clients, customers and employers...The new designation will provide its holders with international recognition and credibility as business professionals in the global marketplace" (American Institute of Certified Professional Accountants, April 6, 2000).

The press release announced the establishment of a Task Force that would undertake the creation of the new designation. The new profession would span several disciplines including law, accounting, change management, information technology, knowledge management, performance measurement and project and risk management.

Upon closer examination, however, the new professional designation appeared to be an attempt to revisit the MDP concept from a different level of analysis. By April of 2000, the notion of fully integrated multidisciplinary organizations was under significant attack both from capital markets regulators as well as a number of professional associations. The public expose of PricewaterhouseCoopers had occurred two months previously (January 31, 2000) and the American Bar Association's House of Delegates had recently (August, 1999) rejected the MDP concept despite their own Commission's report, which favored MDPs. The announcement of this new professional designation, therefore, appeared to conveniently avoid the apparent rejection of MDP *firms* by promoting a form of MDP designation for *individuals.* Secondly, the strong emphasis on the global mobility of such professionals also appeared to be a direct appeal for legitimation from that audience within government most interested in promoting the globalization of trade in services.

The institutions that supported the Task Force for the new global professional designation were all professional associations for accounting. The press release identified the following founding members; The American Institute of Certified Public Accountants, The Canadian Institute of Chartered

Accountants, The Institute of Chartered Accountants of Australia, The Institute of Chartered Accountants of England and Wales, The Institute of Chartered Accountants of Ireland, New Zealand, Scotland and South Africa. The absence of any professional associations from any other discipline, particularly from law where the opposition to MDPs was the strongest, underscores the observation that the new designation was simply an effort to circumvent the existing opposition to MDPs by appealing for legitimation to a different audience.

There is little evidence that the appeal had any effect. Although the initial proclamation was made with a high level of publicity (the Press Release was carried by nearly all trade and professional journals in accounting) there has been little subsequent publicity about the progress of the Task Force. E-mails made by the author to the announced Chair of the Task Force, Robin Harding, have gone unanswered and the telephone number provided in the press release for the Task Force is no longer in service.

The third subsidiary audience for MDP legitimation within the state includes those departments within government charged with the responsibility for overseeing professional associations. Across most North American jurisdictions, the regulation of professions occurs at the level of state or provincial government. In Alberta, for example, the department of Professions and Occupations, a subsidiary department of Alberta Human Resources and Employment[3], holds the regulatory responsibility for professional regulation. In Ontario the equivalent regulatory authority for lawyers, is held by the Department of the Attorney General.

This audience was remarkably mute as the MDP debate unfolded. In sharp contrast to trade regulators and capital market authorities, no public statements, press releases or position papers were produced regarding the subject of multidisciplinary professional practice. This was particularly surprising for the Ontario Government, which twenty years earlier, had commissioned a number of studies on multidisciplinary professional firms. It is unsurprising, therefore, that few of the statements made by actors engaged in promoting or opposing MDPs made direct appeals to this audience.

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[3] Formerly Alberta Labour.

One possible explanation for the relative lack of interaction between actors and this audience may relate to the long history of professional dominance or co-optation of this particular branch of government by professional associations. Halliday (1987) and others (Scott, 1999; Friedson, 1986) have suggested that professional associations hold a long and complex relationship with their state regulators. In return for providing various state-building functions, such as the internal administration of justice, in the case of law, professional associations are granted a great deal of autonomy from this state actor. This was confirmed, in part, by the observations of the Secretary of the Law Society of Alberta, who observed:

> "In the past few years we have had a very good relationship with [the Department of Professions and Occupations]. They did, at one time, suggest a model of professional legislation for us based on the model of the Health Professions Act, which, as you know, contains a strong push toward multidisciplinary teams, but we made it very clear that law serves a special function in assisting government in, for example, the administration of justice. I believe we made our point, because they immediately dropped it" (Interview, Law Society of Alberta Executive, 1999).

This is, however, only part of the answer. We can infer that this particular audience was highly receptive to the general notion of multidisciplinary practices. Perhaps the strongest indicator of this are the various initiatives taken, both in Ontario and Alberta, by these state actors to reorganize the delivery of professional services along multidisciplinary lines. This was a stated objective of the Attorney General of Ontario in commissioning the Professional Organizations Committee in Ontario in 1980.

Similarly, the Alberta government used a "multidisciplinary model" for the delivery of health care services in its early attempts to change the Health care legislation of that province. An early version of the legislation provided omnibus legislation that would have brought physicians, nurses and other health care service providers under a common set of regulations. Although physicians successfully resisted this regulative push toward MDPs in health, the Alberta government used the legislation as a model for integrating the accounting profession in the province, ultimately bringing Chartered Accountants, Certified General Accountants and Certified Management Accountants under the same legislation (Dennis Gartner, Professions and Occupations Interview).

The primary motivation for this legislative push is to achieve governmental efficiency. However, as a representative of Professions and Occupations observed, if that means endorsing a new organizational form for professionals, then the government will be cautious:

> "The main reason for such omnibus legislation is to achieve regulative efficiency. That is, its easier to administer these laws when you can set up a single administrative body with a common set of rules and policies rather than, for example, having one for CAs, one for CGAs and so on. If however, there is some concern that forcing professions into a common form will present potential problems of public policy, to consumers for example, then we will have to re-examine that (Interview, Senior Executive, Professions and Occupations Alberta 2000).

In spite of supporting the idea of MDPs for reasons of regulative efficiency, the wishes of professional legal associations have clearly been supported by this audience, both in a general historical sense and with respect to the specific debate about MDPs. The 1980 *Report on Professions and Occupations* made to the Attorney General of Ontario, which strongly supported MDPs in law, ultimately succumbed to "intense pressure by the Law Society of Upper Canada" (Law Society of Upper Canada, *The 'Futures' Task Force Interim Report of the Working Group on Multidisciplinary Partnerships*: 44). We can also infer that provincial government authorities supported, or did not oppose, the Law Society of Upper Canada's model rules on multidisciplinary practice (i.e., the 'control' model) that denied fully integrated MDPs because the legislation supporting the Law Society's preferred model was enacted without objection from officials in the Attorney General's Department or debate in the legislature. This suggests, if not outright endorsement of the stance of professional associations in law, then benign or passive acceptance.

### Market

The marketplace is a central audience for legitimating new organizational forms. Two distinct sub-audiences can be identified within the general category. The financial or investment community plays a critical role in evaluating the technical prospects or survivability of new firms by placing a present value on estimations of future performance (Hybells, 1995; Aldrich, 1999). Investment analysts, accountants and stock promoters offer a highly standardized ritual of evaluation of the future potential of new products, forms and managerial practices. They also provide direct access to resources through generating investment capital for new organizational forms. These are powerful legitimating functions.

Unfortunately, the financial community does not directly impact professional service firms because these firms are organized as partnerships, rather than publicly traded corporations. The partnership form of organization is a historical consequence of efforts to diminish the role of the marketplace in the professions. Allowing outside ownership of professional firms would cause the professions to lose control over their work and permit professional judgment to be influenced by non-professional owners and by economic concerns.[4]

The second sub-category of market-based audience is composed of consumers. In the context of the MDP debate, however, this community is still too broad and must be further sub-divided into two component groups. The division is based on the often observed 'two hemispheres' of the legal profession; the distinction between those professionals who represent large organizations (corporations, trade unions, governments) and those who represent individuals (Galanter and Palay, 1991; Heinz and Laumann, 1982).

Of these two audiences, the Big Five clearly targeted large corporate clients to justify their vision of multidisciplinary practice. The advantages of 'one stop shopping' outlined in the *Trebilcock Report*, in representations made by

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[4] It is interesting to note that the shift in dominant modes of governance, away from the profession and toward market based mechanisms of control has caused many to revisit this debate. Several jurisdictions, including Australia, now permit professional service firms, including law firms, to form publicly held corporations.

Donahue Ernst & Young and in arguments made by representatives of the Big Five before professional associations and before capital market regulators all focused explicitly on the economic advantages that would accrue to large, multinational organizations. Although the *Trebilcock Report* acknowledged that some subsidiary benefits might also flow to individual consumers, this was clearly not their focal audience.

In fact, most of the Big Five representations on the issue of client demand completely disregarded the individual consumer. The following excerpt, taken from the testimony of Kathryn Oberly, General Counsel for Ernst & Young, to the American Bar Association's *Commission on Multidisciplinary Practice*, illustrates the fundamental focus on large corporate consumers:

> "We are aware that the globalization of the economy, combined with instant, inexpensive communications has eliminated barriers to entry and increased opportunities for small and large businesses alike. Companies that wish to capitalize on these increased opportunities face complicated legal and business problems. We have also witnessed a tidal wave of mergers among large, multi-national corporations. For example, the planned $81 billion merger between Exxon corporation and Mobil will force the new entry to confront regulatory authorities worldwide over its global holdings, from Venezuela to Japan. And it is not only companies with an international presence that face multi-jurisdictional problems. Businesses operating solely on a local level must comply with ever increasing government regulation and must act defensively to protect against the threat of litigation..." (Oberly Testimony, ABA *Commission on Multidisciplinary Practice*, Beverly Hills, CA, February 4,1999: 1).

It is instructive that, although Ms. Oberly expresses a broad range in both the size and scope of her firm's target client audience, they are all business organizations. Individual clients simply do not form part of her worldview as potential consumers of multidisciplinary services. Nor does the individual consumer appear in any of the representations made by members of the Big Five as they defended their view of MDPs. Although the *Trebilcock Report* mentions individual consumers, it is merely a comment in passing and, in their consumer analysis, individual consumers were not represented. Despite ongoing references to 'consumer welfare' and constantly conflating 'client interest' with 'public interest', the Big Five view of the 'client' (and the 'public') consists of large conglomerate business organizations.

Opponents of MDPs made much of the Big Five's oversight of individual consumers. Responding to the claims of the Big Five that fully integrated MDPs were driven by the pragmatic necessity of consumer demand, opponents to MDPs argued that changing the institutional structure to accommodate large, corporate consumers will produce a fundamental compromise in individual citizens' access to justice and civil liberties. Mary Trapp, a lawyer from a small firm in Cleveland, Ohio, questioned the relevance of MDPs for her clientele:

> "At some point lawyers need to shift their thinking on the MDP issue. Its nice to talk about large corporations wanting the cost savings they think they can get from a law firm merged with an accounting firm. But the people I represent every day, or see when I am dealing with the unauthorized practice of law, are normal everyday working class people. They are the ones who need and are not getting legal services and I don't see how this MDP proposal addresses that issue of access to justice" (Trapp Submission, ABA *Commission on Multidisciplinary Practice*, Cleveland, Ohio, 2000).

The use of moral legitimacy by opponents of MDPs, to counteract claims of pragmatic legitimacy offered by proponents, often linked the relatively narrow audience of "individual consumers" to a broader audience category of the "general public" or even "society". In his plea before the American Bar Association House of Delegates to reject MDPs, representative Jack Dunbar of Mississippi observed that lawyers practicing in isolation from other professions occupy a unique position in society and are often "the only thing standing between the individual and the abuse of authority" (DunBar Testimony, ABA *Commission on Multidisciplinary Practice*, Atlanta, August 8, 2000: 2). It was this "broader public conception of lawyers' clientele" he argued, that should "drive the issue" and ultimately form the basis of any policy decision on MDPs.

Opponents of MDPs also questioned the validity of claims by the Big Five that the new organizational form was, in fact, driven by consumer demand. Bernard Wolfman, a professor of law from Harvard University, argued before the American Bar Association *Commission on Multidisciplinary Practice* that there was not "one shred of credible empirical evidence" of consumer demand for MDPs. Steven Crane, representing the State Bar Association of New York, echoed this observation and suggested that market expansion of the Big Five was the sole motive for MDPs but that these were "cleverly shrouded in vague claims" of client demand. Proponents of MDPs responded to these attacks by suggesting that empirical evidence of consumer demand is inappropriate when the product does not yet exist:

> "Since when does providing more choice to a consumer require proof by empirical evidence? Isn't it intuitive that it is inherently better in a free enterprise system, in addition to firm A, to also have the choice of firm B and C? Its impossible to provide empirical data beyond the intuitive, beyond logic, beyond some groups saying they would like it" (Abney Testimony, ABA *Commission on Multidisciplinary Practice*, Cleveland, Ohio, 2000: 2).

In a similar line of argument, Stephen Butler, representing KPMG before the US Securities Exchange Commission *Public Hearings on Auditor Independence* suggested that providing empirical evidence of consumer demand for MDPs was like Sony providing empirical evidence of consumer demand for the Walkman before it was publicly available. "How can you measure demand for a product that does not yet exist?" he observed.

Professional associations did not appear to place particularly high importance on the legitimating opinions of consumer audiences. The comments of the Law Society of Ontario's *Working Group on Multidisciplinary Practice*, for example, in their initial working paper, was dismissive of what might or might not be demanded by consumers of professional services:

> "Perceptions about what clients or the market demand should not solely dictate regulatory responses. Markets for professional services are to some extent socially constructed and influenced by various regulatory rules. We take it to be a starting point that any reforms should account for the ethical and practical concerns evinced by the present regulatory regime. It is important, however, that regulatory responses contemplate changing market behaviour" (Roach and Iacobucci, 1998: p. 3).

This excerpt is reflective of the assumptive parameters of professional associations regarding the relative priority given to modes of field governance and the relative priority given to consumer audiences as result. Although market controls exist, they are assumed to be subordinate to, and a product of, normative and regulatory controls. The interests of the consumer, therefore, are subordinate to broader concerns that result from professional controls. In terms of legitimation strategies, professional associations are therefore more directly focused on state audiences and the audience provided by their own members than they are on client constituencies.

The American Bar Association and the Law Society of Alberta each expressed similar preferences. In their final recommendation, which rejected MDPs, the American Bar Association *Final Resolution* claimed that their dismissal of multidisciplinary practices was based on "primary recognition of the public interest" and secondarily on "preserving the core values of the legal profession" (American Bar Association, *Final Resolution of House of Delegates*, August, 2000). Significantly, the resolution did not mention any intention of protecting consumer or client interests. In Alberta, similarly, the *Interim Report of the Committee for Multidisciplinary Practices* acknowledged the potential consumer demand for such services, but cautioned that these interests were "a relatively minor concern in comparison to the overriding importance of preserving core professional values and protection of the public interest" (Law Society of Alberta, January, 2000: 1).

In sum, the pro and anti MDP camps targeted distinctly different consumer audiences and linked their legitimation efforts to distinctly different types of legitimacy claims (Table 5.5). Proponents of MDPs used claims of pragmatic legitimacy and targeted large corporate consumers of multidisciplinary services. Opponents of MDPs used claims of moral legitimacy supported by the power of regulative legitimacy and targeted primarily individual consumers.

**Table 5.5: Legitimacy Strategies by Type of Consumer Audience**

| | **Consumer Audience** | **Type of Legitimacy** |
|---|---|---|
| **Pro MDP** | Corporate Consumers | Pragmatic |
| **Con MDP** | Individual Consumers | Moral/Regulative |

An analysis of the evidence presented by consumers at the American Bar Association Commission on Multidisciplinary Practice and in opinion surveys about consumer demand for MDPs[5], however, demonstrates that the *actual* consumer demand for MDPs was precisely the opposite of that pursued by proponents and opponents of multidisciplinary firms. That is, while it was assumed by proponents of MDPs that large corporate consumers were most in favor of the new organizational form, this client constituency was largely indifferent to the product. And, while opponents of MDPs assumed that individuals would be poorly served by MDPs, the data collected throughtout the MDP debate, demonstrates consistently strong support amongst individual consumers for multidisciplinary legal services. Each group will be examined in turn.

In their representations before the American Bar Association Commission on Multidisciplinary Practice, consumer groups representing poor and disadvantaged individual consumers of legal services provided unanimous and enthusiastic support for a new organizational form that would allow legal services to be provided in conjunction with other professional services, including social work, financial consulting, psychological and counseling assistance and health services. Theodore Dobro, for example, the President of Consumers for Affordable and Reliable Legal Services argued that MDPs held "enormous potential for bringing together professionals in different disciplines to help solve individuals' complex socio-economic problems" (Dobro Submission, ABA *Commission on Multidisciplinary Practice*, New York, February 12, 2000: 3). He also noted the public perception that the legal profession was "remote and out of touch with the needs and concerns of everyday people" and suggested that multidisciplinary teams might serve to refashion legal services into a "more accessible" form for the poor and disadvantaged.

Mr. Dobro also identified other disadvantaged individuals who might benefit from multidisciplinary legal services:

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[5] This analysis considers five such surveys. Two were conducted by legal journals; *Commercial Lawyer* (June 21, 1998) and the *Financial Times* (September 9, 1999).. One was conducted by the International Bar

> "I am convinced that multidisciplinary practices represent one promising solution to the unmet legal needs problem. And I am not alone. I understand that the Commission has received letters of support from a number of organizations that serve low and moderate income families, people of color and various other disadvantaged groups. Among others, various branch offices of the NAACP and the Urban League have expressed their belief that MDPs will help provide broader access to legal service. For the same reason, the National Council of Negro Women has written to your Commission in support of allowing MDPs" (Dobro Submission, ABA *Commission on Multidisciplinary Practice*, New York, February 12, 2000: 3).

The Executive Director of the Consumer's Alliance of the Southeast US appeared before the American Bar Association *Commission on Multidisciplinary Practice* to point out the potential benefits of reduced search and coordination costs for middle-income individuals. Such consumers, he observed, likely only contact a lawyer when they purchase a house and when drawing up their wills. It would be useful, however, if they could coordinate their financial, legal and estate services in a single firm. Reference was made to a survey by the National Association of Realtors, in 1997, in which over two thirds of over 5,000 home buyers questioned, indicated that they would, in the future, select a company that is able to provide every service they need under one roof.

These comments were repeated by a representative of the American Association of Retired Persons, who argued that 'one stop shopping' would provide a considerable benefit for his members. The Vice-President of the Electric Consumers Alliance observed that "many problems have only a legal *component* and that other professionals may be needed to bring their expertise to bear on other components of a particular problem" (Johnson Submission, ABA *Commission on Multidisciplinary Practice*, 1999: 2). He also observed that more individuals are likely to become consumers of legal services if they were presented as part of a multidisciplinary team, thereby increasing the overall market for legal services to individuals. The President of Consumers First, a national consumer lobby group, enthusiastically endorsed the advantages of multidisciplinary legal services to his members arguing that MDPs held the

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Association (1998), one by the Illinois CPA Society and one contained in the 'Trebilcock Report."

promise of increasing access to legal services by individual consumers and, over time, of reducing their cost (Conran Submission, ABA *Commission on Multidisciplinary Practice*, 1999).

Consumer advocates and lawyers involved in family law and juvenile matters also endorsed MDPs for their clients. Lynda Skely, the Ethics Counsellor for the State Bar of Arizona, for example, argued that MDPs would provide better quality services to those individuals whose fundamental problems are socioeconomic but are expressed in legal proceedings. An additional benefit would be that formal recognition of MDPs would bring non-lawyers who provide de facto legal services into the same regulatory regime as lawyers and, ultimately, will provide for better consumer protection and improve the quality of legal representation for the poor. Under the current system, she argued, victimized consumers have no recourse except for expensive civil action.

In all, more than twenty five consumer groups, representing the interests of tens of millions of individual consumers of legal services provided testimony to the Commission. Each representative unequivocally endorsed the new organizational form using many of the arguments of pragmatic legitimacy used to legitimate MDPs with respect to large corporate consumers.

The evidence for support for MDPs amongst corporate consumers, by contrast, was, at best, mixed. In comments before the American Bar Association *Commission on Multidisciplinary Practice* Steven Alan Bennett, representing Banc One Corporation, one of the ten largest bank holding corporations in the US, endorsed the general idea of MDPs but expressed concern that they might be dominated by accountants. Accountants, he observed, "do not currently provide top quality legal advice and are unlikely to do so in the future" (Bennett Submission, ABA *Commission on Multidisciplinary Practice*, Washington, D.C. November 12, 1998: 1). A representative of another large corporate consumer, Cable And Wireless PLC, a large US based telecommunications corporation with $12 billion in annual revenue, suggested that her experience with accounting based MDPs in Europe had been problematic because of their tendency to "bundle in" unnecessary services. This 'bundling', she complained, "signals a sort of dumbing-down of the practice of law" (Wall Submission, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., November 13, 1998). The American Corporate Counsel Association, representing lawyers employed by large corporate consumers of legal services, also placed strong qualifications on their endorsement of MDPs, arguing that, while they support the concept of 'one stop shopping', they would not use such services if there was "any suggestion of loss of solicitor client privilege, client confidentiality or any diminution in the quality of service" (Brown Testimony, ABA *Commission on Multidisciplinary Practice*, New York, February 12, 2000: 2).

Surveys of potential consumers of multidisciplinary professional services provided equally contradictory results. The most comprehensive survey on the subject, published in *Commercial Lawyer* on June 21, 1998 questioned both CEOs and purchasers of legal services amongst the 350 largest UK corporations. Eighty-eight percent of those surveyed indicated that they did not want an amalgamation of legal and accounting services and did not see any advantage in joining them.

A second survey by the *Financial Times* (September 9, 1999) questioned a smaller sampling of 100 CEOs of the largest UK and US firms and concluded that two thirds of those surveyed opposed lawyer-accountant MDPs. However, the survey reported that, if a merger of their existing legal or accounting service providers produced an MDP, fifty percent of the responding organizations indicated they would continue to use the combined professional firm.

A survey of two thousand business owners in Illinois, jointly conducted by the Illinois Certified Professional Accountants Society, the American Legal Marketing Association and legal publisher Martindale-Hubble offered further refutation of the claim of 'overwhelming client demand' for MDPs. Only twenty five percent of respondents indicated a preference for 'one-stop shopping' for professional services. Although a strong majority (seventy six percent) of business owners said they would have no fundamental objection if their lawyer and accountant became partners in a combined practice as a result of a merger, only one in five respondents viewed having their accountant and lawyer in the same firm to be an advantage.

Similarly a survey published by the International Bar Association in the summer of 1998 found that, for cross border transactions, in house counsel strongly preferred selecting law firms in each jurisdiction or using a 'one-stop' multinational law firm over using an international accounting firm for such services (Hannay Submission, ABA *Commission on Multidisciplinary Practice*, 1999). In his testimony before the American Bar Association's *Commission on Multidisciplinary Practice*, Bernard Wolfman referred to a survey in the *Economist* (March 6, 1999) in which a majority of the 100 representatives of UK corporations expressed a preference for legal services that were separate from other professional services.

Even the data presented by the Big Five in the context of the *Trebilcock Report*, purportedly to demonstrate consumer demand amongst large firms for multidisciplinary legal services, is equivocal. The authors of the report interviewed "fourteen corporate clients who have used the services of an MDP. The sample included eight Canadian companies, six foreign firms, three of which had commercial operations in Canada." Although nine of the firms reported "ease of coordination" as a perceived advantage of using an MDP, nearly as many (eight firms) stated that MDPs offered insufficient expertise in specialized areas of the law (Trebilcock and Csorgo, 1999: 48-49).

*Summary:* An analysis of the consumer audience interest in MDPs, therefore, suggests a distinct 'disconnect' between legitimation strategies pursued by opposing camps in the MDP debate, and the actual demand for multidisciplinary services. While MDP advocates focused on large corporate consumers of such services as their primary legitimating audience, this constituency was largely indifferent to the new organizational form. The audience that was mostly ignored by advocates of MDPs, by contrast, was highly vocal in their support for combining legal and other services. An opposite disconnect occurred with opponents of MDPs who argued that MDPs would benefit large corporations but would impair access to justice by the poor and underprivileged. Opponents relied, largely, on claims of moral legitimacy to underpin their argument. The consumer audience to which these claims were directed, however, offered overwhelming support for the new organizational form and expressed their support in arguments that relied heavily on pragmatic legitimacy.

This disconnect may be explained by the overriding influence of institutional logics by proponents and opponents of MDPs, who, in deference to assumptions about the field that are based upon cognitive assessments of the dominant means of social control, fashion their legitimation strategies in ways that are consistent with their internal logic rather than in accordance with empirical observation. Thus, opponents of MDPs, who happen to be predominantly professional associations, reflexively adopt a position that they assume protects the interests of 'the public' even when empirical evidence suggests the opposite. The obvious disconnect between actors and audiences, in their legitimation strategies for MDPs, also offers considerable support to the notion that the market for professional services is, largely, a social construct.

## Legitimation by what means?

A final question necessary to understanding inter-organizational legitimacy focuses explicitly on the *process* of legitimation by analyzing the actions and behaviours undertaken by actors seeking legitimacy. That is, in addition to the previous questions posed, in order to understand legitimacy one must also ask, "By what means is legitimacy pursued?"

The struggle over MDPs in law suggests two broad answers to this question. First, organizational actors *did* things. They engaged in specific actions or behaviours designed to justify their particular vision of multidisciplinary practice. Organizational actors also *said* things; they adopted specific *rhetorical strategies* designed to persuade others of the legitimacy of MDPs. This final section is, therefore, divided into two parts. The first will examine the legitimating actions of organizations and the second will analyze their rhetorical strategies.

**Actions**

Proponents and opponents of MDPs engaged in two very different patterns of strategic behaviour in their efforts to promote or deny multidisciplinary partnerships. These patterns were, largely, consistent with their respective cognitive perceptions of the dominant mode of governance in the field of professional services. Proponents of MDPs, specifically the Big Five firms, adopted a primary focus on the market in their efforts to legitimate MDPs. They expended considerable resources in an effort to be the first to 'occupy the marketplace' with a concrete illustration of an MDP in legal services for North America. Theirs was a 'prototype' strategy and was based on the assumption that, once their prototype demonstrated the overwhelming economic or technical legitimacy of the new organizational form, both regulatory and normative legitimacy would follow.

Opponents of MDPs, by contrast, relied primarily upon regulative legitimacy to constrain the full expression of fully integrated MDPs in the market. This group of actors, led by professional associations in law, adopted an explicit strategy of being the 'first mover' in the regulatory realm and expended considerable resources to 'occupy the legislative field' with rules and regulations designed to constrain the final form of multidisciplinary practices. This strategy was based upon the assumption that market performance and technical efficiency is largely socially constructed and that, by being first to construct the 'rules of the game' they could control the economic performance of MDPs. This strategy also assumed that market controls, in the field of professional services, were subordinate to both normative or professional controls and, most emphatically, to regulative controls.

Big Five professional service firms adopted a legitimation strategy of being the 'first mover' in the marketplace. That is, in order to prove the economic legitimacy of fully integrated MDPs they devoted considerable resources to providing a prototype. Donahue and Partners served this prototype role as a highly visible, symbolic illustration of the alleged market demand for multidisciplinary services in law. An important sub-theme of this strategy was to present the MDP as an inexorable product of overwhelming consumer demand or as a *fait accompli* as a natural product of economic law.

The Big Five undertook several strategic actions in this regard. First, they pointed to the existence of fully integrated MDPs that provided legal services in other jurisdictions in order to demonstrate the 'inevitability' of MDPs in a global context. The *Trebilcock Report*, for example, after describing a number of European and Asian jurisdictions that permit MDPs, argued that the presence of the organizational form abroad serves to "confirm this process of the erosion of traditional professional enclaves through greater integration of professional services" (Trebilcock and Csorgo, 1999: 3).

A second approach used to illustrate the economic inevitability of fully integrated MDPs was to draw attention to the large number of lawyers already working for Big Five firms:

> "As noted above, large professional service firms in Canada and to an even greater extent elsewhere, employ an increasing number of lawyers, especially in the tax advice and planning field…current professional realities decisively negate as a realistic option complete suppression or prohibition of multidisciplinary practices" (Trebilcock and Csorgo, 1999: 63-4).

Similarly, in his presentation to the Law Society of Alberta, Doug Black of Donahue and Partners also pointed to the presence of large numbers of lawyers as employees of Big Five firms as a demonstration of the "market reality" of MDPs. In a follow up letter to the Law Society, Black explained:

> "MDPs are a growing reality. They are already here. We shouldn't waste our time with futile debates about whether or not they should exist, but, rather, should devote our attention to how we might best make them work in the interests of our clients" (*Black Correspondence to Law Society of Alberta*, April 28, 1999).

The sub-text of these arguments is to suggest that resisting the new organizational form is futile. The teeming presence of MDPs in Europe and Australia, and the growing numbers of lawyers inside accounting firms in North America make MDPs a *de facto* reality and it is now the task of regulators to make them a reality *de jure*.

Implicit in this strategy is an assumption that a strong economic presence of the new organizational form would, by sheer necessity of numbers, translate into regulative and normative legitimacy. This strategy did not go unnoticed by opponents of MDPs. Representatives of the State Bar Association of New York observed:

> "The intent of the Big Five to deepen their penetration of the US legal service market is clear. By hiring ever more lawyers the Big Five put themselves in a postion to claim with ever greater force that they represent the interests of a substantial portion of the Bar" (New York State Bar Association, *Report of the Special Committee on Multidisciplinary Practice and the Legal Profession,* January 8, 1999: 44).

A strong presence in the marketplace, the Big Five reasoned, could be converted into a strong political or normative voice within the legal profession.

A third strategic action taken by the Big Five to 'occupy the marketplace' was to provide highly visible symbols of both the demand for MDPs in the market and illustrations of what an integrated professional services provider in law might actually look like. The 'captive' law firm of Donahue and Partners, and the 'strategic alliance' of McKee Nelsen Ernst & Young in the US, provided important symbolic illustrations of the market driven inevitability of MDPs.

It is significant to note that the captive firm was established in Canada without advance discussions with professional regulators, either in law or accounting, even though the Big Five firm "had to have known the impact and the reaction it would have created within the legal community" (Interview Bencher, Law Society of Alberta 1999). In Alberta, the Secretary of the Law Society confirmed that he had "no advance warning about the captive law firm in his jurisdiction" acknowledging that, "although there is no formal rule requiring such notice, given the unusual nature of the firm, I would have expected a 'courtesy call' " (Interview, Executive, Law Society of Alberta 1999).

Nor did Ernst & Young solicit approval from their own professional association. The Executive Director of the Alberta Institute of Chartered Accountants admitted that the Big Five firm did not provide his organization with notice of their intent to form al law firm, even though, " they would have to be aware of the stir it would cause" (Interview, Executive-Institute of Chartered Accountants of Alberta 1999). One observer, a senior partner at a 'second tier' accounting firm, BDO Dunwoody, suggested that the reluctance of Ernst & Young to enter into advance discussions with professional regulators was, generally "consistent with their disdain for regulation generally" but was more likely explained by the desire to make a large symbolic statement about the changing field of professional services and the role of large professional service firms in shaping it:

> "I think they just wanted to make a big 'splash'. They wanted to come onto the scene with a glaring example of an MDP and they wanted to say 'There's nothing you can do about it' " (Interview, Partner BDO, 2000).

The sequence of action is also consistent with the assumptive primacy placed by the Big Five on modes of governance in the field. Occupying the market with a highly visible prototype MDP and then challenging regulators to act reinforces the observation that the marketplace is the ultimate legitimating force in their strategic world-view.

A supplementary strategy, designed to heighten the public profile of the captive law firm, involved highly public hirings of prominent senior legal partners, both in Canada and the US. In Canada, shortly after the captive law firm was formed, Enst & Young announced the hiring of Stewart Ash, a partner at Fraser Milner (Globe & Mail, March, 1997: B-1). Two months later, Ernst & Young hired "top tax lawyer" Robert Couzin from Stikeman Elliott (Of Counsel, July 7, 1997, p. 1). In the US, both founding partners of McKee Nelsen Ernst & Young, William McKee and William Nelsen were high profile hires from large law firms in Washington, D.C. and Atlanta, respectively. In February, 2000, Weil Gotshal and Manges, one of the largest US law firms, lost senior partner Steven Lainoff to KPMG's international tax office in Washington, D.C.. His departure triggered an exodus of six other tax partners (Jones, April 2000, pp. 5).

Although the captive firms and highly public hires generated considerable publicity, there is considerable evidence that the actions were based more on an effort to produce headlines than on any argument of increasing revenues.

Although the intent of the actions was clearly to demonstrate the superior technical viability of multidisciplinary practices, a number of observers have doubted the long term economic viability of captive firms or the exorbitant salaries paid to lure the tax lawyers away. Robert Culbertson, managing tax partner of King and Spalding, a Washington, D.C. law firm, referred to the hiring of tax lawyers by the Big Five as, "having taken on a public relations character". The purported salaries offered these lawyers, he argued, simply did not make economic sense:

> "They are recruiting good, strong tax people, but in order to get the big names, they are paying amounts that will be very hard to recoup in a tax consulting business. Its hard, when your running the numbers on that kind of business to get too far north of $1.5 million, unless you assume a huge amount of leverage. But the accounting firms are now paying north of $2 million. I just don't know how they make a go of it" (Culbertson Testimony, ABA *Commission on Multidisciplinary Practice,* New York, Novermber 12, 2000)

Similar concerns were expressed about the economic viability of captive law firms, both in Canada and abroad. In the UK, for example, even though Andersen Legal, the law firm housed within Arthur Andersen, promoted their initial earnings as "record growth and proof of the need for multidisciplinary services" (Andersen Legal Press Release, February 12, 2000) independent analyses of their revenue demonstrated that lawyers in the Big Five firm fared worse than their counterparts in small or mid-sized UK law firms, and far worse than what a lawyer at an elite London firm might earn. The analysis of first year earnings of Andersen Legal in the *Commercial Lawyer,* for example, reported the following:

> "Andersen Legal's first published figures for its world wide network of law firms are hardly impressive at face value. Once analyzed, they are even less so. The figures, which average out at £110,000 per lawyer per annum, leave a distinct feeling that the global giant is still a million miles - or, more approximately, millions of dollars - away from the much vaunted 21st century mega-firm" (Wilkins, 2000, 36: 13).

The report suggested that comparable earnings at a top tier London firm would be at least two, and possibly, three times that figure. Moreover, if Andersen

Legal were assumed to pay its lawyers at the 'going rate' for mid-sized London law firms:

> "it is difficult to see how the global legal arm, with offices and IT overhead also to be taken into account, operates at anything better than a loss" (Wilkins, 2000, 36: 13).

Skepticism about the economic viability of Ernst & Young's captive law firm was expressed by accounting partners *inside* Ernst & Young. The managing partner of a local Alberta office of Ernst & Young, described the captive law firm as "a *very* expensive experiment" by his firm, adding that "it remained to be seen if the experiment will be a success" (Managing Partner, Ernst & Young, Interview, 2000).

The foregoing suggests that the actions undertaken by Big Five firms to express the economic viability of their law practices and, by extension, the technical legitimacy of fully integrated MDPs, was more symbolic than real. The strategic logic is, however, straightforward. Economic legitimacy is the primary goal. This is to be achieved, or at least demonstrated, through 'first mover' occupation of the marketplace for multidisciplinary legal services. It is also demonstrated by presenting MDPs as an overwhelmingly successful global phenomenon and by suggesting that subsequent adopters will enjoy similar market opportunities and financial success.

It is important to observe that the Big Five did not focus exclusively on the economic legitimacy of MDPs. They also took action in the regulative sphere as, for example, in their previously described lobbying efforts with US politicians regarding the proposed auditor independence rules proposed by the US Securities Exchange Commission. These actions, however, are distinguishable from their primary strategy. The political campaign mounted by the Big five in the US was clearly a defensive strategy, a rearguard action that was adopted in the face of an aggressive regulative assault by the US Securities Exchange Commission.

Opponents of the new organizational form, by contrast, adopted a 'first mover' strategy in the regulative realm. Professional associations demonstrated uncharacteristic speed in conducting hearings, generating new professional rules that severely constrained MDPs to lawyer-dominated organizations and in convincing state regulators to enact supportive legislation.

Consider, for example, the speed with which the Law Society of Upper Canada produced their legislative response to Ernst & Young's establishment of North America's first captive firm. The Working Group or "Futures Task Force" devoted to studying MDPs was established April 4, 1997. First reading of the legislation amending the Law Society Act of Ontario (Bill 53) occurred in the Ontario Legislature on June 25, 1998. In the intervening fourteen months, the Law Society of Upper Canada produced more than fifteen working papers, performed the most comprehensive survey of members in its history, consulted with members of several other jurisdictions and with the accounting profession and commissioned a three phase study of clients, members and the public.

The speed with which all this was performed is more remarkable when one considers that the last time the Law Society Act of Ontario was amended was in 1970 and that process involved nearly three years to complete. Moreover, since that time the Law Society of Upper Canada had successfully resisted any attempts to amend their enabling legislation, including the previously described efforts of the Professional Organizations Committee in the late 1970s and early 1980s. In commenting on the rapid change in attitude toward legislation by the Law Society of Upper Canada, Peter Freeman, Secretary of the Law Society of Alberta commented, "they switched from twenty years of playing defense against government regulation to an overnight full court press" (Freeman Interview, 2000).

The American Bar Association also moved very quickly to occupy the regulatory field. The *Commission on Multidisciplinary Practice* was established on August 4, 1998. The Commission was discharged in August of 2000 after the House of Delegates passed a resolution formally rejecting MDPs.

In comparison to their counterparts in law, professional associations in accounting moved very slowly. By the time the Canadian Institute of Chartered Accountants published a report endorsing MDPs in 1995 (*The Interprovincial*

*Task Force on the Multidisciplinary Activities of Members Engaged in Public Practice*) the professional association had already been studying multidisciplinary practice for at least three years. The Task Force was, itself, established in 1992 and produced its first report on July 3, 1993. Provincial bodies, such as the British Columbia Institute of Chartered Accountants, had been studying the issue at least two years before that. But, in spite of their unanimous acknowledgement that MDPs were "both appropriate and necessary" (Canadian Institute of Chartered Accountants, 1995) for the future of the profession, the Canadian Institute has not yet made any effort to generate rules regarding MDPs, nor has any provincial institute. The American Institute of Certified Professional Accountants, in 2000, issued model rules endorsing MDPs but has not yet taken any steps to ratify them.

It is also apparent that opponents of MDPs held an assumptive logic that placed a higher strategic value on regulative legitimacy than they attributed to economic or pragmatic legitimacy. This is demonstrated, in part, by the speed with which they turned to legislation to define the limits of Big Five expansion. It is also demonstrated by the earlier cited comments of the authors of the interim report of the *Working Group of the Law Society of Upper Canada* who argued that the market for professional services has historically been "a social construction" defined by the rules of society rather than laws of economics (Roach and Iacobucci, 1998).

American Bar Association representatives were, similarly, unconvinced by appeals to economic legitimacy or to arguments that MDPs were "inevitable". The existence of MDPs in other parts of the world and internally in accounting firms was not so much the result of inexorable economic principle as the result of lax regulation. The remarks of Delos N. Lutton, representing the American Bar Association International Law and Practice section as well as the Union Internationale des Avocats is illustrative:

> "Let's be realistic; if the giant consulting and accounting firms see a regulatory vacuum, they will fill it. Client's interests are being compromised while our profession fails to take reasonable steps to reinforce the values our system of justice rely on for their proper

> functioning, and while the apparent lack of rules or willingness to enforce them permit aggressive consultants and accountants to ignore jurisdictional boundaries and solicit customers from whatever location is the most permissive or most lax. Our response is to recommend the construction of a level playing field – the adoption of clear, universal standards, rules that can be implemented and enforced and which will enjoy a broad consensus amongst lawyers worldwide" (Lutton Submission, ABA *Commission of Multidisciplinary Practice*, 1999: 3).

The statement reflects both the rejection of any logic of economic determinism regarding the new organizational form, and the reflexive reaction, amongst this group of actors, to use regulation to define strategic advantage.

One of the most powerful methods of strategically disarming a potential competitive rival is through the strategic use of legal process (Caeldris, 1996). Changing the rules of the game to suit your needs is a classic tactic of the institutional entrepreneur (North, 1990). Opponents of MDPs, particularly professional associations in law, turned quite naturally to strategic action in the legislative realm to constrain the actions of MDP proponents in the marketplace. Their assumptive logic, drawn from their worldview in which economic action was subordinate to or the product of rules and regulations, is quite consistent with a worldview in which state and professional methods of social control served to define and constrain behavior in the marketplace.

*Summary:* The respective legitimating actions of opponents and proponents of MDPs are, thus, reflective of their institutional world-views. As Scott (1987) observes, institutional structures define interests, such that actors in "one type of setting, called firms, pursue profits; the actors in another setting, called agencies, seek larger budgets; that actors in a third setting, called political parties, seek votes and that actors in an even stranger setting, research universities, pursue publications" (Scott, 1987: 508). In this case, Big Five firms, working from an institutional setting dominated by market-structured choices, elected a legitimation strategy based in that venue. Professional associations, whose institutional landscape involves setting and interpreting rules, chose a legitimation strategy based in that venue. Which strategic direction an actor or group of actors adopts depends upon that actors subjective interpretation of institutionally determined expectations of effective behavior. Collectively, the actions and counteractions of proponents and opponents of MDPs served to shape its ultimate expression.

**Rhetorical Strategies**

The previous section demonstrated an important relationship between cognition and strategy. Widely held beliefs or assumptions about the nature of reality, or worldviews, produced important differences in strategic behavior. Actors within a worldview that placed regulations as somehow subordinate to market action or economic rules (i.e., that markets make rules) adopted strategies that were consistent with that worldview. Similarly, actors who held a worldview that economic behavior is subordinate to regulation (i.e., that rules make markets) also structured their strategic actions in a manner consistent with that worldview.

In addition to 'doing' things, however, actors engaged in the MDP debate also 'said' things. That is, they engaged in a highly public discourse about the advantages and disadvantages of adopting the new organizational form. An analysis of this debate offers an even more detailed glimpse into the relation between cognition or shared worldviews and legitimation processes. The arguments raised by various actors in order to legitimate their view of MDPs yields useful insights into how these actors perceive their competitive landscape and how these perceptions are translated into actions.

Actors in the MDP debate employed a number of distinct *rhetorical strategies* to legitimate their view on multidisciplinary professional services. Rhetorical strategies are defined as recurring patterns of argument based upon discrete assumptions about the nature of reality which are used to justify an organizational product, function or form. An analysis of the MDP debate in North America reveals five different rhetorical strategies; ontological, historical, teleological, cosmological and value-based. Their characteristics are summarized in Table 5.6 and are discussed in detail in the remainder of this chapter.

Table 5.6: Rhetorical Legitimation Strategies – Types and Characteristics

| Types of Rhetorical Strategies | Characteristics |
|---|---|
| 1. ontological | • Logical, a priori categories of approriate organizational form, function or product |
| 2. historical | • Appeals to tradition based on past success |
| 3. teleological | • Goal directed change |
| 4. cosmological | • Natural unfolding or evolution according to immutable laws |
| 5. value-based | • Values are immutable and any change must preserve them |

*Ontological:* Ontological rhetorical strategies involve statements based upon *a priori* premises about what can or cannot co-exist in a particular organizational domain. Such arguments are based upon logical categorizations rather than empirical observation. Notions of the inherent compatibility or incompatibility of certain aspects of organizational reality underpin ontological arguments. In philosophical terms, for example, a logical statement cannot be true and false at the same time. Truth and falsehood are said to be ontologically distinct.

In organizational terms, ontological rhetorical strategies rest upon logical assumptions about organizational attributes that can or cannot mutually co-exist within a common organizational structure. There are several illustrations of ontologically separate categories in organization theory. Bureaucracy and professionalism, for example, are presented as ontologically distinct categories (Blau and Scott, 1964). Note that the incompatibility of the categories need not be necessarily true. A number of empirical studies, for example, have suggested that the logical distinction between professionalism and bureaucracy may be overstated (Mintzberg, 1983; Wallace, 1995). All that matters is that they form part of an argument, or *a priori* reasoning, which assumes a logical difference or conflict between the categories and that these are expressed in support of a particular organizational strategy.

In the MDP debate, opponents of MDPs made extensive use of ontological rhetoric. Fully integrated MDPs, they argued, were an illegitimate organizational form because of the inherent incompatibility between audit functions and legal practice. A strong illustration of this line of rhetorical argument is provided by the US Securities Exchange Commission in their proclamation of the Final Rules on Auditor Independence in which they declared an inherent conflict in Big Five firms providing audit and legal services to the same client:

> "We believe that there is a fundamental conflict between the role of an independent auditor and an attorney. The auditor's charge is to examine objectively and report, regardless of the impact on the client, while the attorney's duty is to advance the client's interests. As discussed in the Proposing Release at greater length, existing organizations, the Supreme Court and professional legal organizations have deemed it inconsistent with the concept of auditor independence for an accountant to provide legal services to an audit client..." (US Securities Exchange Commission, *Final Report: Auditor Independence Rules*, February, 12, 2001).

The statement contains all the component elements of an ontological argument. The terms "fundamental conflict" and "inconsistent concept" point to logical, categorical distinctions between two different sets of roles and functions within an organizational setting. The assessment of these categorical distinctions is not based upon empirical findings of impropriety or conflict between roles or functions. The SEC acknowledged that no such conflict had been observed or recorded in their hearings or previous investigations. Rather, the assessment was based upon a rationalized belief (i.e., "We believe") that was shared by other significant institutional actors in the field (i.e. "existing organizations", "the Supreme Court" and "legal professional organizations").

The influential McCrate Report, which had been credited with convincing representatives of the American Bar Association's House of Delegates to vote against MDPs, is another example of ontological rhetorical devices. At times the authors point to the "incompatibility of cultures" between accountants and lawyers. More often, however, MDPs are criticized because of the inherent differences in the nature of client relationships between auditors and lawyers.

Auditors, they argue, must be 'objective' and act, in part, as policemen investigating clients on behalf of the state. Lawyers, by contrast, are 'subjective' and act in their traditional role on behalf of the client against the interests of the state. The arguments are united, however, by a common assumptive thread of a logical inconsistency between the organizational roles and product of lawyers and auditors.

A variant of an ontological rhetorical strategy involves the claim that one's organizational product, function or form occupies a unique or 'special' category in the field. In the MDP debate, this was raised in the context of the 'unique role' that lawyers play in maintaining broader societal institutions. The core of this argument is that "lawyers are a special category and are not, therefore, subject to the same rules". The basic elements of this claim are set out in this statement, made by Jack Dunbar, a representative of the American Bar Association speaking to the House of Delegates:

> "Lawyers are special people. We are not like accountants. We're not like MBAs and deal doers and investment bankers. We're fiduciaries. We're in the Constitution. We're Officers of the Court. And we hold in trust the very fabric of this society. It has been lawyers who have kept the playing field level, who have kept people honest in the marketplace and who have stood between the individual and the abuse of authority for 200 years and contributed to the very success of this great American experiment...And so I get real nervous when somebody suggests that we blend this profession into a business unit as a profit center for a company controlled by non-lawyers" (Dunbar Testimony, ABA *House of Delegates*, August, 2000).

Similar claims of the uniqueness of this category of profession included references to the 'public' character of legal services. Such claims often also included references to the "spirit of public service" or the unique role of lawyers as "protector of individual rights and civil liberties". Such claims are clearly designed to draw logical categorical boundaries around lawyers. The claims also conveniently overlook the counterargument, that corporate commercial lawyers, who spend most of their time drafting contracts and negotiating deals, are as far removed from these grandiose claims of public service as are accountants and consultants.

Although the question of inherent incompatibility in the roles of accountants and lawyers is an interesting one, more interesting, perhaps, is the question of whether such ontological arguments represent a deliberate rhetorical strategy or reflect the elevation of long standing beliefs and values to the status of institutionalized 'facts'. That is, the alleged role conflict between lawyers and accountants is presented as a 'social fact' (Durkheim, 1965). There is a strong indication that those who make such arguments would be unconvinced by any empirical evidence to contradict their beliefs. There is, thus, a sacred element to arguments based on ontological distinctions which present them as issues of faith raised to logic. They reflect institutionalized beliefs or values that have endured so long that they form part of the social fabric of a particular occupational or organizational role or function.

*Historical:* Opponents of MDPs also sought legitimacy for their actions through appeals to history and tradition. The core of this type of rhetorical strategy is expressed resistance to future change based on past success. Change is represented as a significant, and threatening break with the past and actors in the present are described as being "at a crossroad" (Lynn Turner, Director of Enforcement of US Securities Exchange Commission, 1999), at a "turning point" (*Ward Correspondence to Law Society of Upper Canada*, 1998) or are accused of "failing to honor their past" (*Hurlburt Submission to Benchers of the Law Society of Alberta*, Jasper, Alberta, June, 2000).

An effective illustration of the essential elements of a rhetorical strategy grounded in history or tradition is presented by the written submissions of the Defense Research Institute, an association of US trial lawyers, before the American Bar Association's Commission on Multidisciplinary Practice. After recounting the long and successful history of the US legal profession, the association representative stated:

> "Americans expect their lawyers to be true to the tradition that produced John Adams, Clarence Darrow and Thurgood Marshall - lawyers who zealously represented even the most unpopular and unprotected clients. Americans deserve to have lawyers who are true to this tradition. Mixing

> the practice of professions which may have contradictory obligations will not serve the interests of the vast majority of American citizens. We urge the ABA to refrain from adopting [MDPs]" (Kouris Testimony, ABA *Commission on Multidisciplinary Practice*, Atlanta, GA, 1999: 1).

The Defense Research Institute submission demonstrates the components of a historical rhetorical strategy. References to "tradition" and to names of prominent and successful historical figures who were also lawyers seeks to legitimate a claim by providing a sense of continuity between past and future behaviors. It also tries to evoke an emotional response, relating the history of the profession to nationalistic sentiment through liberal references to "Americans" or "American citizens". The statement concludes with a threat of discontinuity or loss of past success if traditions are no longer honored.

The US Securities Exchange Commission also used a rhetorical strategy based on history to legitimate their attacks on the multidisciplinary expansion of Big Five auditors. Reacting to strong criticism from the Big Five that these public attacks were part of a personal vendetta by Chair Arthur Levitt, the SEC issued a press release and posted on their website a statement that outlined the long history of tensions between the SEC and the Big Five relating to auditor independence and non-audit services (US Securities Exchange Commission, *Fact Sheet,* June, 2000). The statement outlined a historical line of SEC concern with non-audit services extending back "over sixty years". The press release referred to regulations against multidisciplinary services that have existed "since the 1930s". The text also summarized historical tensions between the SEC and the profession over non-audit services that began in the 1970s and continued each decade thereafter.

The intent of the document was to establish a history or continuity of engagement with this issue by the SEC that not only was long standing, but also extended well beyond the tenure of the current chairman. The SEC used this rhetorical strategy to deflect allegations that the concerns with auditor independence were new and, more importantly, part of a personal agenda.

Historical rhetoric also can, on occasion, extend into the future. Several opponents of MDPs adopted a technique of 'crystal ball gazing' or looking into the future in an effort to describe the long-term dangers of change. Lawrence J. Fox, for example, a New York lawyer and academic, described a personal "nightmare" regarding MDPs in this statement to the American Bar Association:

> "It was five years from now, the ABA was in steep decline and I had fallen into the annual meeting of the National Association of Multidisciplinary Professional Service Firms. Well dressed individuals with badges scurried about, and the hail-fellow-well-met greetings in the corridors had a familiar ring, but after an exhaustive search no programs on *pro bono* were to be found, the crisis in death penalty representation went unnoticed, free speech only referred to the charge for attending the programs and no one was worrying about the independence of the judiciary...(Fox Submission, ABA *Commission on Multidisciplinary Practice*, Beverly Hills, California, February 5, 1999: 1).

Mr. Fox also described a scenario of abdication of professional values and the ultimate disappearance of an independent judiciary. This variation of a strategy of historical rhetoric reverses the presentation sequence of the previous example. That is, rather than argue that future success is dependent upon past tradition, this 'crystal ball' approach tries to demonstrate future doom based upon failure to adhere to tradition.

Proponents of MDPs used similar rhetorical devices in painting positive pictures of dynamic and profitable futures for the legal profession if the new organizational form were embraced by lawyers. Several representatives of Big Five firms painted detailed pictures of "expanded market opportunities" for lawyers, "interesting and more exciting work" and "better quality work lives" if MDPs were adopted.

Proponents of MDPs also used historical arguments to legitimate their sensitivity to the core values of the legal profession. Gerard Nicolay, for example, representing PricewaterhouseCoopers, emphasized his long personal history and that of his family to demonstrate his sensitivity to the ethical dilemmas created by MDPs:

> "I am a sixth generation lawyer. My ethics and honor are important to me. I would never compromise them while working at PricewaterhouseCoopers" (Nicolay Testimony, ABA *Commission on Multidisciplinary Practices*, Washington, D.C., November 12, 2000).

Nicolay went on to argue that, like him, other lawyers employed in MDPs would place their ethical values above economic and managerial pressures because of the "long tradition in the profession of devotion" to ethical matters.

Other proponents of MDPs used historical rhetoric to challenge the assertion that law has historically been a 'pure' profession, separate from accounting. James Jones, representing a global public affairs firm based in Washington, D.C., argued that, in fact, there was a long history of multidisciplinary affiliations between lawyers and non-lawyers in North America:

> "affiliations between lawyers and non-lawyers do not constitute a new phenomenon in American law. Indeed, such affiliations have been a part of the legal landscape in America for a very long time" (Jones Testimony, ABA *Commission on Multidisciplinary Practices*, Beverly Hills, California, February 6, 1998).

Mr. Jones described long-standing informal client referral relationships between accounting and law firms, lawyers who provide non-legal financial services and lawyers with dual professional designations, such as CPAs and JDs, and who actively practiced both professions.

Traditions and history, thus, provide very flexible rhetorical strategies. History and tradition can be usefully reconstructed to fit a particular strategic objective. This does not, however, diminish the power or effectiveness of such strategies, particularly for lawyers. A Bencher of the Law Society of Alberta, commenting on an emotional presentation by William Hurlburt, Q.C. which argued against MDPs because they would threaten a "long history of an independent legal profession" (*Hurlburt Submission to Benchers of the Law Society of Alberta*, Jasper, Alberta, June, 2000), observed that lawyers are trained to be bound by precedent and "continually look to the past to answer questions of the future" (Barry Vogel interview, 1999). It is unsurprising, he concluded, that appeals to the past are both common and persuasive.

*Teleology:* A third rhetorical strategy used to legitimate MDPs employs teleological arguments or arguments that focus on a 'divine purpose' or 'final cause'. Teological rhetoric suggests that certain events must occur within the context of some 'grand plan' or ultimate objective. Teleologic rhetoric is most often used to legitimate discontinuous change or change that involves a significant breach with past tradition. The upheaval necessarily associated with such a breach is justified by drawing attention to the long term gain that will ultimately result.

In the struggle over MDPs, teleological arguments were most often used by professional associations in accounting. Accounting institutes, most notably the Canadian Institute of Chartered Accountants (CICA), the American Institute of Certified Professional Accountants (AICPA) and the Institute of Chartered Accountants of Alberta (ICAA), each actively encouraged their members to migrate into other services and embrace multidisciplinary practice in order to avert a professional crisis in accounting. The CICA's *Interprovincial Task Force on the Multidisciplinary Activities of Members Engaged in Public Practice*, for example, pointed to the falling enrollment rates in accounting schools and the declining number of individuals seeking the CA designation as evidence of a looming demographic crisis in the profession (CICA, 1995). Change, specifically the adoption of multidisciplinary practices, was promoted as a necessary step toward averting that crisis. The long-term goal, therefore, was the preservation of the profession and the means to achieve it would involve a substantial breach with the past.

The need to breach with past tradition because of long-term objectives was also emphasized by the AICPA. In the major report of their Futures Committee, *Focus on the Horizon: CPA Vision 2011 and Beyond*, the AICPA explained the need for MDPs by arguing in favour of dramatic and discontinuous change:

> "Why visioning…because you can't extrapolate the future from the past. The rules of business and the economy are changing at mind boggling rates. Visioning focuses on desired, long-term outcomes and recognizes that change is a constant of the future. Visioning encourages continuous testing against the destination, rather than blind faith in a planning process that is often antiquated by the time it is implemented" (AICPA, *Focus on the Horizon: CPA Vision 2011 and Beyond*, 2000: 4).

The statement reveals two important components of teleological reasoning. Foremost, it makes plain that the future orientation or the grand schema mandates a dramatic break with past tradition. In contrast to the historical rhetoric, this strategy suggests that past behavior is irrelevant.

Second, it dismisses traditional notions of strategic planning in which a rigorous program of planned change is the primary strategic tool. Rather, because teleological reasoning is so goal focused, it adopts a schema of an "emergent strategy" (Mintzberg, 1983) where current behavior is constantly tested, refined and re-tested in the context of the current organizational environment.

Other proponents of MDPs offered teleological arguments in support of the new organizational form. Charles F. Robinson, a lawyer and consultant, told the American Bar Association Commission on Multidisciplinary Practice that lawyers must "zero-base the future" and adopt "unprecedented change for a precedent oriented profession" by endorsing MDPs. His argument endorsed radical, revolutionary change for the profession directed toward a 'grand design':

> "If we put back some of the pieces from the past it will be because we believe those pieces fit 21st century practice, not because 'we have always done it that way'. We must identify new skills, reshape our service portfolio, redesign our processes, and redirect our resources. Firms cannot afford to wait for the ponderous timelines that guide the American Bar Association. We must stop defending the past and current practice and create future practices for our profession. We don't have the time for baby steps. How do we want our profession to be shaped in the next five to ten years. What is our worldview of the future..."(Robinson Submission, ABA *Commission on Multidisciplinary Practices*, Beverly Hills, California, February 4,1999: 5).

Teleological rhetorical strategies, used in the foregoing excerpt, in addition to emphasizing the need to break with the past, also rely heavily on implications of a grand function or design in their future orientation. Goals, intentions and purposes form an important part of the rhetoric in this approach to justifying the adoption of a new organizational form.

*Cosmology:* A fourth rhetorical strategy used to legitimate multidisciplinary practices uses statements of cosmology or statements that present the new organizational form as a 'natural' consequence or part of the orderly evolution of universal laws. This is the reasoning that underpins the assumption that MDPs are a *fait accompli* or part of the natural evolution of organizational form according to 'immutable' laws of economics.

Cosmological legitimations are to be distinguished from teleological arguments in two fundamental ways. First, the change promoted by teleological argument is instrumental; it is change generated according to a grand plan of human design and is intended to fulfill the needs of human agents. Change, in a teleological sense, must be forced or pushed to accomplish defined goals. Cosmological statements of change, by contrast, appear to lack this high degree of human agency. Change will arrive, under cosmological assertions, whether we want it to or not. More significantly, cosmologists argue that change will arrive whether resisted or not.

A second important distinction between cosmological and teleological change is that the former is described as occurring at a much more gradual or evolutionary pace than the radical and revolutionary change contemplated by teleological arguments. Change is presented as an irrefutable fact, but one which will unfold at its own, internal pace. Each of these observations is described more fully below.

Cosmological explanations for MDPs emphasize the inevitability of the new organizational form due to the uncontrollable momentum of forces outside the control of immediate actors and audiences. A senior partner of Donahue and Partners, described the movement to MDPs in law as "a natural process of evolution" (Interview, Partner-Donahue and Partners, 2000) and as "an irrefutable fact of globalization" (ibid).

A more detailed description of the evolutionary inevitability of MDPs was presented to the American Bar Association Commission on Multidisciplinary Practice by James W. Jones, in house counsel for APCO, a large multinational corporation. Mr. Jones sought to contextualize MDPs as part of a long chain of change that was an inherent part of the American legal profession. The development of multidisciplinary practices in law, he argued, "is a logical step in the ongoing evolution of the profession". He also stated that these changes are hardly surprising and, rather, are consistent with the internal character of the profession:

> "the current deliberations regarding the MDP concept are quite consistent with the evolving character of the legal profession. It bears remembering that the American legal profession has never been static but has always evolved to meet the needs of the country. Thus the profession has changed dramatically and often during its some 200 years of history. Creative and innovative lawyers have introduced many 'revolutionary' concepts that are now an accepted part of our professional landscape. The creation of law firms - an American invention - is a good case in point. The modern law firm was first conceived in New York in the 1870's as a means of providing more responsive and comprehensive legal services to growing corporate enterprises that needed large scale representation...I suggest that, properly viewed, the development of the MDP is but a logical step in the ongoing evolution of the profession as it seeks to respond to the changing needs of its clients" (Jones Submission, ABA *Commission on Multidisciplinary Practices*, Beverly Hills, California, February 5,1999).

Like most cosmological strategies of rhetoric, Mr. Jones' statement attempts to 'naturalize' change by presenting it as a relatively harmless illustration of continuous or ongoing processes.

The causal source of the change, according to cosmological rhetoric, is most often outside the control of those affected by change and the rhetoric usually makes generalized references to vague outside forces of 'globalization' or, as in this case, 'client demand'. An illustration of this tactic is revealed in the following account by John Dzienkowski, a Professor of Law from the University of Texas, who, in his written submissions to American Bar Association Commission on Multidisciplinary Practices, pointed to globalization and economics as the factors that have determined the "inexorable" shift to MDPs:

> "Although there have been many challenges for the ABA in the past two centuries, the global economy poses some of the most difficult problems for the regulation of American lawyers. The rise of the multi-national corporation began this inexorable movement toward internationalization...The ABA can no longer regulate American lawyers apart from changes brought about in the global economy. If it insists on

> resisting change, American lawyers will no longer be competitive in delivering legal services to the world's corporations. Multidisciplinary services to corporations, partnerships and individuals are certain to occupy a prominent role in the world economy" (Dzienkowski Submission, ABA *Commission on Multidisciplinary Practices*, Beverly Hills, California, February 6, 1999).

An emphatic theme embedded in cosmological rhetoric is that the changes originate from a source more powerful that the affected community of actors and audiences and that resistance to such change is futile, if not outright dangerous.

*Value-based:* A final type of rhetorical strategy for the legitimation of new organizational forms relies on an emphasis of values. Value-based rhetoric uses appeals to normative authority drawn from wider belief systems, outside the organizational field, in order to legitimate. This approach often involves ethical evaluations of the relative 'goodness' or 'evil' of a particular organizational product, function or form. On occasion, value-based rhetoric is directed *ad hominem* or directly against the ascribed character of a proponent of opponent of a new organizational form, rather than against attributes of the form itself. Most value-based rhetoric involves appeals, either directly or indirectly, to emotion,

A common value-based rhetorical strategy is to simply attack the moral propriety of the proposed new organizational form. Linda Galler, a Professor of Law at Hofstra University, demonstrated this technique in her denunciation of accountant controlled MDPs. Such organizations are inherently wrong, she argued, because accountants, unlike lawyers, do not receive formal training in ethics:

> "Unlike their counterparts in law school, those studying accounting at the undergraduate or graduate level are not required to complete any courses in professional ethics. Indeed, I have on occasion informally polled my own JD students who majored in accounting as undergraduates and have yet to find a single one who took an accounting course on ethics...Based on my admittedly unscientific research, it appears that accounting schools regard ethics very differently than do law schools" (Galler Testimony, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., November 12, 1998).

The core of the argument is a relative assessment of the values of respective actors engaged in the struggle over MDPs with a concluding assessment of 'our values are better than theirs'.

A reversal of the value-based strategy is to argue for the legitimation of MDPs because accountants, or alternatively, Big Five firms are 'good corporate citizens'. This was, in essence, the argument presented by Jim Schiro, CEO of PricewaterhouseCoopers, in his argument before the US Securities Commission:

> "I'm here today on behalf of PricewaterhouseCoopers to contribute to the creation of rules that safeguard the public interest and allow the profession to adapt to the evolving needs of the capital markets, our clients and the public.
>
> The right rules will ensure that this profession continues to be highly attractive to first rate people, professionals with strong character who posses highly sophisticated analytical skills, technological and interpersonal skills.
>
> Make no mistake, the caliber of our people rather than the comprehensiveness of rules will be the investors' best protection. Our goal should be to ensure that the profession has an abundance of trained people with an objective mindset supported by firms appropriately focused on audit and assurance " (Schiro Testimony, US Securities and Exchange Commission *Public Hearings on Auditor Independence*, September 20, 2000).

The statement of Mr. Schiro urges the Commission to accept the inherent 'goodness' of the value structure of those professionals in his firm. Rules and regulations, he suggests, are a less adequate means of protecting the public from the potential dangers of multidisciplinary practice that are the core values of his employees. The implicit message is, 'trust us, we are good people'.

A similar argument was made by Roger Page, National Director of Tax Practice for Deloitte & Touche , who, in representations before the American Bar Association Commission on Multidisciplinary Practice, pointed to his firm's positive record of human resource practices and the relatively poor human resource practices of comparable law firms as evidence of the legitimacy of multidisciplinary organizations:

> "We believe, based on feedback from our lawyers, that the environment and culture of our firm is substantially more collegial that that of their former law firms. This belief is confirmed by the inclusion for the second year in a row on *Fortune* magazine's list of the 100 Best Companies to Work For in America. We are currently ranked eighth on the list because of the high level of satisfaction among our employees and our progressive human resource programs...our firm fully embraces opportunities for women and minorities. Our human resource programs include the Initiative for the Retention and Advancement of Women, which was launched in April, 1992...This has been so successful that, for each of the past four years, we have been selected by *Working Mother* magazine as one of the 100 best companies for working mothers. In September, 1997, our Chairman, Mike Cook, received the Family Champion of the Year Award from *Working Mother* magazine" (Page Submission, ABA *Commission on Multidisciplinary Practice*, Washington, D.C., March 11. 1999).

The overriding theme of Mr. Page's remarks is that Big Five firms, though multidisciplinary, are good public citizens and their internal values reflect those of the broader community.

As one might expect, in value-based rhetorical statements considerable attention is paid to the 'public good' or 'social accountability' in an effort to link the values of the target of legitimation efforts with values held in the broader community or social context within which the organization exists. This 'greater good' is implicit in claims of consumer welfare benefits offered by proponents of MDPs (Trebilcock and Csorgo, 1999). Opponents of MDPs make a similar claim to high moral objectives in their assumption, often explicit, that preserving the "core values of the legal profession is in the best long term interests of the general public" (Canadian Bar Association, *Striking a Balance-the Report of the International Practice of Law Committee on Multidisciplinary Practices and the Legal Profession,* August, 1999: 12).

These five categories of rhetorical strategies form a typology of persuasive techniques used in the debate about the new multidisciplinary organizational form. Rarely was one strategy used in isolation. More often, multiple rhetorical strategies were used within a single text, speech or other document. There are, however, certain patterns of connection between types of rhetoric, groups of actors in the field and conceptions about the appropriate nature and pace of change (Table 5.7).

**Table 5.7: Rhetorical Legitimation Strategies - Dominant Users and Conceptions of Change**

| Type of Rhetoric | Pro or Con MDP | Conception Of Change | Primary User |
|---|---|---|---|
| 1. ontological | Con | Static categories, resistent to change | US SEC |
| 2. historical | Pro or con | Flexible but any change must be continuous with past | All actors |
| 3. teleological | Pro | Revolutionary and Radical change | Professional accounting associations And Big Five |
| 4. cosmological | Pro | Evolutionary change | MDP Supporters in law |
| 5. value-based | Con | Flexible but change must preserve expressed values | Professional associations in law |

Ontological rhetorical strategies were used, largely, against the notion of MDPs. The nature of ontological reasoning, which relies on the existence of pre-determined categories that are either compatible of incompatible with others, carries an inherent strucutral resistance to change. Although many opponents of MDPs used ontological reasoning to justify their resistance, this approach was most forcefully used by the US Securities Exchange Commission. Historical strategies were used, with relatively equal effectiveness, by both opponents and proponents of MDPs. On balance, opponents were most likely to include expressions of historical rhetoric to justify their denial of the new organizational form. However, all actors ultimately made use of this strategy which could be manipulated to either support or resist change.

Big Five representatives and accounting professional associations were the most common users of teleological rhetoric to advocate large scale, radical and revolutionary change. The adoption of MDPs in law was not only part of the internal strategic plans of individual firms and of the profession, but was also part of a desirable reorganization of the field of professional services toward a larger goal of increased efficiency in production and delivery of these services.

MDP supporters within the legal profession, by contrast, were less likely to advocate radical change. Gradual or evolutionary change, that was a consequence of immutable forces outside the profession was the preferred rhetorical strategy of MDP advocates inside law. These cosmological arguments enjoyed a dual advantage of not suggesting a rapid breach with past practice and firmly fixing responsibility for the change on forces beyond the control of primary actors in law.

Value-based rhetorical strategies, however, were the preferred tactics of most professional associations in law. Without denying the possibility of change or the adoption of MDPs as a new organizational form within law, this rhetorical strategy offered the benefit of slow and controlled change that could be shaped to serve the dominant interests of the legal profession.

Rhetorical strategies are helpful in understanding processes of legitimation, particularly in the context of new organizational forms, where there is little concrete empirical evidence available to evaluate the merits and problems associated with a particular course of action. Rather, actors engaged in the debate had to rely on the persuasiveness of verbal statements made by various actors in determining their support or opposition to MDPs.

A second, and perhaps more important utility of using rhetorical strategies to analyze legitimation practices is that the types of rhetorical devices used by various actors engaged in the struggle over multidisciplinary form provides powerful evidence of their respective worldviews regarding issues of social control within an organizational field. The fact that these actors present such arguments as plausible explanations for strategic action provide useful clues about their cognitive schema or shared understanding of the nature of competitive interaction. This includes how they perceive their competitive landscape, what they believe their client base values most in professional services and a host of related subjects that sketch out each actor's conception of the organizational reality in which they exist. Linguistic strategies betray socially constructed views of the world and the degree to which these socially constructed views shape or influence what is subjectively experienced as legitimate rational behavior.

## Conclusion

The foregoing discussion demonstrates the inadequacy of static typologies of legitimacy. Although a useful starting point, such typologies fail to capture the dynamic complexity of legitimacy as a process of mutual enactment between actors, audiences and organizational attributes. In the context of legitimating multidisciplinary practices in law, legitimation was the outcome of intertwined strategies of multiple actors promoting very different attributes of the proposed new organizational form to distinct audiences. In order to achieve a full understanding of legitimacy, therefore, researchers must go beyond the foundational question of, "What *is* legitimacy?", and ask the supplemental questions, "What aspect of an organization is being legitimated?", "To which audience?" and, "By what means?"

This Chapter offers several important insights regarding the process of legitimation. First, it suggests that legitimacy is a highly symbolic activity, grounded in language and produced by intersubjective meanings produced by collective discourse at the level of the organizational field. Second, it demonstrates that differences in legitimation strategies reflect different underlying understandings about the dominant mechanism of social control or governance within the field. Finally, the material presented in this chapter offers important methodological insights for future efforts to understand legitimacy as a strategic process. Each of these observations will be elaborated in turn.

*Legitimacy as a Symbolic Activity:* Legitimation is a highly symbolic activity. Although the importance of symbol and language in processes of legitimation have been frequently identified in the literature (Nielsen and Rao, 1987; Pfeffer and Salancik, 1978; Pfeffer, 1981; Suchman, 1995) this understanding has not advanced much beyond consensual support for the underlying notion that symbols play an important role. There has been little development of empirical observations or theoretical concepts regarding the interaction between symbolic behaviors and outcomes of legitimacy.

The analysis in this Chapter provides cogent evidence of the important role played by language and linguistic strategies in the efforts to legitimate different versions of multidisciplinary practice in law. Although an analytic distinction was made between behavioral actions and speech actions (i.e., 'actors *did* things and *said* things) the bulk of activity amongst actors was devoted to rhetoric. The legitimation process described here was clearly grounded in language. Actors used language to construct shared systems of meaning (Greenwood and Hinings, 1988) and to connect those shared meanings to broadly held understandings about mechanisms of social control. Strategic discourse was used, for example, by professional associations to reconstruct their past, re-frame the present actions of the Big Five firms as being contrary to the public interest and to heighten members' anxiety about the future. The US Securities Exchange Commission and the Ontario Securities Commission, similarly, used language to connect the accountant-dominated version of multidisciplinary practice to the potential for catastrophic ruptures in the economic fabric of the North American economy.

Even the actions undertaken by various players in the struggle to legitimate different versions of multidisciplinary practice can be re-characterized as symbolic activity. Hearings held by the American Bar Association and the Securities Exchange Commission on the issue were, for the first time in the history of each organization, open to the public. Members of the Securities Commission in Ontario and the United States made a number of public appearances and speeches on the issue. And professional associations issued a large volume of documentation, press releases and related documentation outlining their position on the issue. Even the establishment of North America's first 'captive law firm' was largely symbolic. The evidence presented suggests that, rather than becoming an immediate economic success, Donahue and

Partners, and other captive law firms in Europe, were more valuable to the Big Five firms for their public profile than for their economic contribution.

Because legitimation is a process of social construction (Berger and Luckman, 1966), legitimacy is, therefore, largely a 'language game' (Pondy, 1978; Mauws and Phillips, 1995) in which statements and discourse are used to construct meaning systems and to connect new organizational forms, products or practices to wider systems of social control. Because legitimacy is an outcome of discourse the process of legitimation is an inherently 'messy' process. That is, the ultimate outcome of legitimation (a new organizational form, in this case) reflects a compromise between the collectives of actors engaged in the legitimacy struggle. While each group engaged in the debate about multidisciplinary practices adopted a distinct view of what a multidisciplinary professional firm might look like, the result was something of a collective compromise. No single actor or group of actors could claim a definitive victory in the legitimation struggle for MDPs. And yet, the end result produced a degree of legitimacy for a new organizational form that mixed professions in a single firm. MDPs now exist in North America and are recognized by professional associations and in legislation, although they will likely fall into two distinct categories of 'accountant dominated' or 'lawyer dominated' multidisciplinary firms. Still, this is a significant change in the legal profession, which has held a static organizational form in North America for nearly a hundred years.

The observation that legitimacy is a collective outcome of various groups of organizational actors, each pursuing separate strategies, contradicts much of the current literature, both on legitimacy and on institutional entrepreneurship. This literature tends to emphasize the importance of dominant actors or coalitions of dominant actors in legitimation campaigns. Dimaggio (1991), for example, points to the dominant role played by art museum professionals in articulating and legitimating a particular organizational form for contemporary museums. Fligstein (1990; 1991) similarly identifies the dominant role played by a coalition of the very largest corporate enterprises in establishing the multidivisional organizational form.

These views suggest a clear demarcation between dominant actors and receiving audiences. The material presented here, by contrast, suggests that the distinctions between actor and audience are, often, somewhat arbitrary and that, on occasion, they become conflated. That is, audiences may, at times become actors themselves. This was clearly the case with capital market regulators. Although the Big Five professional service firms were aware of the important role that the US and Ontario Securities Exchange Commission would play as a legitimating audience, the evidence suggests that they were quite surprised by the dramatic and aggressive actions undertaken by these state agents to oppose them and to de-legitimate their version of the new organizational form. Similarly, the Law Society of Upper Canada reacted quickly to the creation of a captive law firm in their jurisdiction, by moving away from their traditionally passive role as a legitimating audience to a substantial advocate of 'lawyer-dominated' MDPs.

The actions of dominant players are, therefore, somewhat constrained by the counter-actions of others within the field. The mutual interaction of organizations at the field level mitigates the capacity for action of "institutional entrepreneurs" (DiMaggio, 1988; 1991). Rather, legitimacy is a macro-level outcome or product of the mutual action of multiple actors, each pursuing independent strategies of legitimation.

*Linking Legitimation Strategies to Field Level Governance:* Each of the actors engaged in the legitimation contest adopted strategies that were symbolically representative of their subjective interpretations of the organizational field. That is the legitimation strategies adopted by advocates and opponents of the new organizational form, were underpinned by their subjective interpretations of the dominant methods of social control within the field. Proponents and opponents, thus, engaged in distinct patterns of legitimating behavior that were consistent with a worldview in which, either market *or* professional and state methods of control were assumed to predominate (See Table 5.8).

**Table 5.8: Strategic clusters of activity: Pro and Con MDP**

| | Organizational Focus | Type of Legitimacy | Primary Audience | Primary Action | Primary Rhetoric |
|---|---|---|---|---|---|
| Pro | Product | Pragmatic | Corporate consumer | Occupy the market | Teleological |
| Con | Form and Internal functions | Normative and regulative | State regulators | Occupy the legislation | Ontological |

Proponents of MDPs perceived a field in which regulative and normative controls were subject to, and determined by, market forces. Consistent with that assumption they promoted the *product* of the proposed new organizational form to large, corporate consumers using primarily economic arguments that extolled the pragmatic legitimacy of MDPs. Their language borrowed extensively from an 'economic' vocabulary and portrayed their version of the new organizational form to be the inevitable result of unassailable laws of economic evolution. Their primary legitimating action, consistent with the view that events in the marketplace were the primary means of governance, was to establish a market prototype of the organizational form and to legitimate their actions *post hoc*. The product of the new organizational form was understood to be a *private*, rather than a public good.

Opponents of MDPs held a world view in which markets were subordinate to, and defined by, interactions between professional and regulative controls. This set of actors focused, largely, on the form and internal functions of the new organizational form, viewed the state and state regulators as their primary audience and relied heavily on ontological rhetoric to justify their actions. Their language was based, primarily, on a 'normative' vocabulary and portrayed their version of the new organizational form as a social, rather than an economic, construction. The product of the new organizational form was to be characterized as having a large *public* component.

These two different clusters of activity and language illustrate two very different perceptions or world views of the field of professional services. More particularly, they underscore Hoffman's (1999) observation that fields are structured around ideological issues. The two clusters of legitimation activity represent field level struggles over ideology in which actors engage in a multi-layered process of social discourse. In these ideological struggles, actors vie for control of the interpretive process by which mechanisms of social control are understood. For proponents of MDPs, these mechanisms of social control were to be understood in the context of economic rationality. For opponents of MDPs, the appropriate mechanisms of social control were to be understood in the context of public service with a large component of state control. The compromise outcome of this ideological struggle reflects the combined thinking of actors and audiences and their retrospective rationalization of the conditional outcome of this debate.

It is also important to note that the concept of legitimacy is linked directly to conceptions of change held at the level of the field. Legitimation requires actors to link organizational attributes to macro-level values held at the field or societal level. These values are subject to processes of change and change in accordance with shifts in field level governance mechanisms.

In the MDP debate, the two 'clusters' of legitimation activity can be linked to past and future conceptions of the dominant mode of control in the field of professional business services. Opponents of MDPs, clinging to traditional conceptions of professional governance, executed their legitimation strategy in accordance with those views. Their ontological justifications for their position reflected a view in which the appropriate pace of change was incremental and evolutionary (Greenwood and Hinings, 1996).

Proponents of MDPs held the view that the future of the field would demonstrate the dominant influence of market controls and constructed their legitimation strategy to be consistent with that view. Their teleological justifications for the new organizational form anticipated radical, disjunctive institutional change (Greenwood and Hinings, 1996) which, proponents argued, would be worth it in the long run once the social welfare benefits of enhanced efficiency were realized. Implicit, in both strategies, were assumptions about the degree to which that shift had already occurred and the pace at which it would continue.

*An Interpretivist Perspective on Institutions:* The story of the emergence of multidisciplinary practices in law provides considerable support for the institutional view on organizations. Although the impetus for change may well have occurred because of pressures in the 'technical' environment, the final expression of those changes was the product of political activity in the institutional sphere. The process by which this occurred, most particularly with respect to the struggle to legitimate the new organizational form, and the significant role played by language, underscores the importance of developing an interpretive approach to understanding processes of legitimation.

The dynamics involved in the legitimation of multidisciplinary practices in law focused quite explicitly on language. This was understood by Berger and Luckman (1966) to be a multistage process by which reciprocal 'typifications' and shared meaning systems become institutionalized in 'symbolic universes' of meaning. Yet while most analyses of legitimation make honorific reference to the central role played by language (Dowling and Pfeffer, 1975; Pfeffer and Salancik, 1978; Hybells, 1995; Suchman, 1995) there are few empirical efforts or conceptual frameworks that specify the means by which language is used to construct symbolic universes.

The material presented in this chapter is an important first step. It describes a typology of linguistic strategies and connects them to prevailing world views of actors engaged in a legitimacy contest. The typology, however, does not go far enough. It would be useful to have provided a 'thick description' (Geertz, 1973) of the means by which these strategies were developed *inside* the organizational boundaries of each individual actor. This was not possible here, given the reliance on largely public documents and speech actions. Nor was it within the scope of the original frame of analysis. It would, however, provide a fruitful venue for future research.

# CHAPTER SIX
# CONCLUSION

## Introduction

This research was motivated by an attempt to understand the processes by which new organizational forms are created. In Chapter Two I argued that, although institutional theory offered the necessary theoretical and conceptual tools to address this question, past research in institutional theory was too narrowly focused on late stages of processes of institutionalization to observe anything but organizational homogeneity. Those few institutional accounts that *did* observe organizational heterogeneity as an outcome of institutional change, tended to take a holistic and longitudinal view of all the component processes of institutionalization. Consistent with that view, I have undertaken in this thesis, a longitudinal analysis of those events that produced a new organizational form in a highly institutionalized setting.

This Chapter highlights the main findings of this research and links these findings to broader understandings about institutional change, at the level of the organizational field, and the creation of new organizational forms. The Chapter is divided into three parts. The first part summarizes the findings of the previous chapters by revisiting the original research questions. Recall that our primary research question, "where do new organizational forms come from?" was re-specified into three important subsidiary questions; "Who are the institutional entrepreneurs?", "How are jurisdictional boundaries between communities in a changing field negotiated?" and "How are new organizational forms legitimated?" Each of these questions is addressed in turn. This thesis also hypothesized a critical role for field-level governance mechanisms in processes of institutional change. The second part generalizes those findings and summarizes them in a schema of the sequence of deinstitutionalization. In the final section I extrapolate these findings to identify, and discuss, opportunities for future research that have been generated from this inquiry.

## Summary of Findings: The role of entrepreneurship, jurisdictional boundaries and legitimacy in the creation of new organizational forms

The literature review in Chapter Two identified a handful of studies based in institutional theory that examined instances of organizational heterogeneity as an outcome of processes of institutional change. Those studies provided three important clues regarding the means by which new organizational forms emerge.

First, they suggested that *entrepreneurship* is an important characteristic of non-isomorphic institutional change. DiMaggio (1991) pointed to the role of art professionals in reshaping the field of art museums. Thornton (1994) identified large conglomerates, outside the field, as significant actors who refashioned the publishing industry. And Leblibici et al (1991) described the critical innovations of small, fringe players in initiating field-level change in the radio broadcasting industry. From these observations I identified the issue of "institutional entrepreneurship" (DiMaggio, 1988) as an important component of understanding processes of heterogenic institutional change.

A second important issue from these studies relevant to new organizational forms is the issue of *boundaries*. All studies identified the organizational field as the primary arena of heterogenic change and as the fundamental unit of analysis in researching the creation of new types of organizations. Holm (1991) provided a clear conceptual outline of the issue, suggesting that fields are nested constructs, and that a given field is, at any given moment, embedded in multiple overlapping fields of interaction. The friction generated by overlapping sub-communities in a field, according to DiMaggio (1991), provides a potential source of conflict and change. The expression of this change, as described by Thornton (1994), may involve the erosion of field level boundaries between nested systems. The second subsidiary question arose from these observations. That is, "how are jurisdictional boundaries between sub-communities in a changing field negotiated?"

A third issue common to all studies that provided accounts of non-isomorphic institutional change relates to the construction of legitimacy for new organizational forms. In the case of art museums, DiMaggio (1991) observed that the legitimation of the new form of museum empowered and authorized the museum reform movement, which, in turn, permitted the de-legitimation of existing museums. Holm (1991) identified the State as a critical actor in the legitimation of reforms to the field of Norwegian fishing. Leblibici et al (1991) suggest that innovations made by fringe players in radio broadcasting were legitimated when adopted by larger and more established players in the field. In sum, studies of heterogenic change identify legitimacy as an essential element in the creation of new forms of organizing, although each places emphasis on different characteristics of the construct.

Collectively, these three components, entrepreneurship, field boundaries and legitimacy, appeared to provide core elements of non-isomorphic change. Precisely *how* they contribute to institutional change and new organizational forms is not clear. The results of this study suggest that each of these constructs has acquired considerable 'surplus meaning' and needs substantial conceptual unpacking. The contributions this research has provided for each question are provided, in turn, below.

*1. Who are the institutional entrepreneurs:* DiMaggio (1988) coined the term *institutional entrepreneur* to describe the process by which new institutions were formed. New institutions arise, he suggested, when "organized actors with sufficient resources see in them an opportunity to realize interests they value highly" (DiMaggio, 1988: 14). North (1990) used a similar term to describe influential actors who succeeded in implementing changes in the institutional infrastructure, or the 'rules of the game', that favour their competitive interests. Both uses of the term suggest an actor or coalition of actors who succeed in changing institutionalized structures to gain a competitive advantage or to satisfy personal interests. These definitions imply two distinct aspects to the construct of institutional entrepreneurs. First they must effect changes that alter the rules of competition in the field. Second, the changed rules must benefit the actor that initiated the changes.

In the context of the creation of multidisciplinary firms in law, there can be no question that the Big Five firms initiated a series of changes that resulted in altering the rules of competition. Before they entered the field of legal services there were no rules that permitted lawyers to practice in multidisciplinary firms. At the conclusion of this study, such rules existed. Thus, there is no doubt that these actors were important *catalysts* of change. Moreover, when considered from the perspective of the accounting profession alone, the expansion of services stimulated by the Big Five firms may well be described as an illustration of successful institutional entrepreneurship *in accounting* (Greenwood, Suddaby and Hinings, 2001). The first element of institutional entrepreneurship, therefore, was clearly satisfied by the Big Five accounting firms.

The second element, however, was not satisfied. That is, although the rules were changed, the new rules clearly did not work in the interests of the Big Five firms. Of those professional associations in law that adopted rules permitting multidisciplinary firms, the majority stipulate some degree of control by lawyers. A substantial number of professional associations rejected rules that would allow multidisciplinary firms. A few jurisdictions even created rules that expressly prohibit their members from joining multidisciplinary firms. More significantly, perhaps, was the regulatory reaction from the Securities Exchange Commission which, as a result of the entrepreneurial actions of the Big Five firms, proposed rules and regulations that severely curtailed the multidisciplinary aspirations of the Big Five. Thus, while the Big Five initiated changes in the rules of competition for professional services in law, those rules did not favour their self-interest. While the field, as a whole, experienced change, the Big Five were not uniformly rewarded for their entrepreneurial efforts.

Could the term 'institutional entrepreneur' be applied to the professional associations in law? In Ontario, and a few other North American jurisdictions, legal professional associations were successful in generating new rules that protected the dominance of lawyers in these new organizational forms. That is, they created rules and regulations that favoured a 'lawyer-dominated' model of multidisciplinary practice. Others generated rules that will ensure some degree of separation between lawyers and accountants by denying the option of multidisciplinary firms. Still, it cannot be said that these rules were created to serve the self-interest of professional associations in law. In fact, these were rear-guard actions designed to protect the rapid erosion of professional dominance caused by the actions of the Big Five accounting firms. Thus, while the new rules protected these actors' self interest, they were 'reactionary' rules rather than entrepreneurial rules.

Nor can the term institutional entrepreneur be applied appropriately to the actions of the US Securities Exchange Commission. Although, this particular actor initiated rules and regulations that served their particular self-interest, these rules were not designed to effect change. Rather, the rules were designed to resist the changes initiated in the marketplace by the Big Five through their rapid expansion of services. The rules were designed to maintain the *status quo.* Thus, again, the actions of the US Securities Exchange Commission fulfill the first element of institutional entrepreneurship, but not the second.

This research suggests that the construct of 'institutional entrepreneurs' is, itself, problematic. That is, the description of institutional change outlined in Chapters Four and Five describe a complex and intertwined process in which the efforts and aspirations of individual organizational actors were muted and contradicted by the reciprocal actions of others. Institutional entrepreneurship, thus, involves *collective* action and multiple actors. It is difficult in this context to say that any one actor or single coalition of actors fully succeeded in changing the rules to serve their self-interest. There were no clear-cut 'winners' or 'losers'. Although the rules of the game, ultimately, *did* change, the changes were largely reactive and no single set of actors can be attributed with originating them or with exclusively enjoying the results.

This suggests certain theoretical deficiencies in the term institutional entrepreneur. The construct appears to incorporate a broad range of types of actors. Dorado (1999), for example, decomposes the construct of institutional entrepreneurs into three subsidiary ideal types; "catalysts", "engineers" and "innovators". Innovators are those actors who introduce a new idea, organizational form or institutional practice into an organizational field. The 'fringe players' identified in Leblibici et al's (1991) account of the emergence of the radio broadcasting field illustrate the concept of innovators. In this case, marginalized actors within the field of law who undertook entrepreneurial actions to challenge the existing institutional framework, who experimented with new organizational forms for the delivery of legal services, and who originally introduced the notion of multidisciplinary practices to the legal profession, performed the role of innovators. Their innovations, however, were not successful because they lacked the resources to legitimate them and because the field had not yet experienced the catalytic 'shock' that would mandate the need for change.

Engineers refer to social elites within a field that, although they do not introduce innovations, are critical to the ultimate legitimation of innovations, once they are introduced. Engineers are important gatekeepers who exist *within* a field. Cultural and social elites in the field of art museums (DiMaggio, 1991) performed this role. Thornton (1994) identified certain key trade newsletters that emphasized industry financial information as creating important status differences between organizational actors in the field- legitimating some and de-legitimating others-as a critical force in redefining the field. These actors are important gatekeepers, whose approval or disapproval can affect the flow of resources within the field, and whose position within the field can affect the content of discourse and debate.

Several such actors can be identified in the emergence of multidisciplinary firms in law. Clearly, the US Securities Exchange Commission played the part of an engineer. It attempted to restructure the rule system to preserve old boundaries between the auditing profession and other professional services such as law and management consulting. Consumer groups also might be characterized as 'engineers' in this process, even though they promoted the concept of multidisciplinary professional firms in law. In the legal profession, academics in law played a significant 'engineering' function, organizing testimony at the American Bar Association hearings and providing strongly normative commentary on the proposed changes to organizing legal practice.

Finally, 'catalysts' perform the function of providing exogenous shocks to an organizational field. That these actors operate from *outside* the organizational field is a critical element of this role. Outside actors are less subject to the conforming influences of an organizational field. As outsiders they have not been socialized with respect to normative expectations and provide fresh ideological interpretations of events. Similarly, as outsiders, they are less vulnerable to the coercive actions of regulators inside the field. In Thornton's (1994) analysis, large financial conglomerates served this function. In DiMaggio's (1991) account, wealthy external foundations such as the Carnegie Foundation were significant catalysts of change.

The term 'catalyst' more accurately reflects the influence of the Big Five professional service firms in the emergence of multidisciplinary practices in law. Their influence cannot be denied. Without the pressure of these actors it is unlikely that MDPs would exist in the legal profession in North America today. Yet the ultimate expression of rules relating to MDPs in law did not reflect the interests of these actors. Ultimately, they were not completely successful in their entrepreneurial project.[1]

In sum, the construct of institutional entrepreneurship might benefit from some theoretical unpacking. Current uses of the construct, which attempt to locate the capacity to effect macro-institutional change within a single actor or group of actors, deny the complexity of causal mechanisms of institutional change as described in this study. The evidence presented in this thesis suggests that the term institutional entrepreneurship might be re-framed to refer to a process rather than an individual actor. That is, institutional change is affected by a large number of individual actors, each pursuing some form of change. These actors adopt elements of innovators, engineers and catalysts and, collectively, perform the role of institutional entrepreneurs.

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[1] There is an important caveat to this statement. The field is still in considerable flux. Although the existing rule structure does not provide the degree of integration originally sought by the Big Five accounting firms, such rules can change over time. The fact that multidisciplinary firms now exist with lawyers, accountants and other professionals working within the confines of a single organization suggest that, over time, considerable overlap of work functions will occur. This may well result in continuing erosion of distinctions between professions and some revisiting of the rule structure in the future.

An alternative interpretation of the evidence presented here is to concede that institutional entrepreneurs exist, but that their essential function is to *initiate* change. That is, we might suggest that institutional entrepreneurs simply have the capacity to initiate changes in field level governance. This would accurately characterize the actions of the Big Five firms in the creation of multidisciplinary practices. Such an approach must acknowledge, however, the unanticipated consequences of purposeful action. While the Big Five were able to disrupt the existing governance structure in North American law, they were not able to anticipate the result of those changes or how those changes would affect their own multidisciplinary aspirations.

*2. How are jurisdictional boundaries between communities of a changing organizational field negotiated?* This question arose, in part, from Abbott's (1988) observation that occupational communities are in constant competition and jurisdictional boundaries are the subject of ongoing negotiation and dispute. It also arose from the review of institutional studies of heterogenic organizational change, each of which acknowledges the critical role of field level boundaries in the creation of new organizational forms. The argument is most evident in Holm's (1994) description of organizational fields as 'nested systems'. Holm depicts the field of Norwegian fishing as the central point in an embedded system of overlapping and concentric fields. Moreover, the boundaries between these overlapping and concentric fields are dynamic and fluid, thickening in parts and becoming more porous in others.

Prior to 1980 the professional boundaries around law were clearly defined. Professional associations declared who could or could not call themselves a lawyer, how these individuals could organize themselves and what activities these organizations could undertake. At the conclusion of this study, these categorical distinctions were less clear. The lack of clarity of jurisdictional boundaries in the legal profession is perhaps, best illustrated by one member of the American Bar Association's Commission on Multidisciplinary Practice who, at the conclusion of the hearings, declared that "defining the practice of law" was now the most urgent issue facing the profession (Testimony of Lawrence J. Fox).

One of the fundamental insights of this research has been the link between shifting governance mechanisms and the ability to maintain field boundaries. Professional controls have, historically, defined and defended the jurisdictional boundaries of the legal profession. These controls provided professional identity and definition to the legal profession which, over time, became established as taken-for-granted typifications of professional identity (Berger and Luckman, 1966). That is, the professional boundaries had a hard and concrete reality as 'social facts' (Durkheim, 1932). In Berger and Luckman's terms, the dominance of professional controls had achieved 'exteriority' or a social reality that exists as an external fact.

Chapter Four demonstrated the gradual erosion of professional controls, first from within as marginal actors and, eventually, large central players began to question and challenge the assumptions contained within the categorizations produced by professional controls. Lawyers, dissatisfied with the opportunities available within the profession began to migrate outside, a large proportion of which found employment within accounting firms. Similarly, accounting firms, possibly sensing a weakness in the definition of professional boundaries in law, began to migrate into varied forms of legal service, including litigation support services, tax practice and commercial law.

The emergence of market based logics within the legal profession assisted in the weakening of the jurisdictional boundaries of law. As economic rationality began to displace professional norms and controls, actors within and outside the profession began to question the cognitive categorizations produced by the existing institutional order. Was law more a business or a profession? Why shouldn't lawyers be allowed to establish franchises similar to the retail or fast-food industry? Such questions served to further breach the 'exteriority' of professional controls by making existing institutionalized practices visible and contestable.

More significantly, the emergence of market based governance in law allowed actors within and outside the profession to see the boundaries between law and other occupations as more permeable. If, for example, a law firm was as much a business as it was a profession there should be no reason for lawyers to pass up other business opportunities simply because they existed outside the practice of law. This cognitive shift is illustrated by the rapid expansion of alternative business practices in the legal profession, a move that foreshadowed the Kutak Commission and an expressed interest, within the legal profession, for permitting multidisciplinary practices.

Regulatory changes also served to reduce the ability of professional associations to maintain jurisdictional boundaries between the professions. A substantial part of the legitimacy of institutional agents is invested in their authority to establish conceptual boundaries or cognitive categorizations around actors. The court decisions that removed the monopoly power of lawyers, permitted trans-jurisdictional practices and allowed competitive advertising served to undermine the power of professional associations to establish and maintain economic and geographic boundaries around lawyers. More significantly, they compromised the legitimacy of professional associations to generate conceptual categories by creating a general context of doubt about the 'hardness' of professional boundaries.

Collectively, these actions weakened the jurisdictional boundaries around the legal profession. Moreover, it made actors within the legal profession aware that their occupational field was not isolated from other business activities, but, rather, was embedded in the larger field of professional business services. The accounting profession and, more particularly, the Big Five accounting firms, had understood the 'nestedness' of their occupation for some time. For lawyers, however, the realization that the boundaries between their profession and other business services was not nearly so well defined as before produced something of an identity crisis in the profession.

This research, thus, contradicts the assumption, contained in the phrasing of my original research question. The question asks how professional boundaries were *negotiated*. The term 'negotiated' suggests a somewhat formal, one-on-one interaction between professional associations in accounting and law regarding how these occupations might divide up the market for professional business services. That was, in fact, the historical practice in taxation matters. As early as 1951, the American Bar Association and the American Institute of Certified Professional Accountants, established a formal relationship regarding the division of labour in income tax matters (they produced a "Statement of Principles Relating to Practice in the Field of Federal Income Taxation"-see Chapter Four). A few years later a formal organization was established to defuse tensions between accountants and lawyers over income tax matters. This, ultimately, evolved into the National Conference of Lawyers and Certified Public Accountants, a body that served a model role in negotiating jurisdictional boundaries between professions.

In the case of multidisciplinary practices in law, however, there was no evidence of negotiation. That is, there was no rational discussion, between professional groups, about appropriate boundaries or proper divisions of professional work. Rather, the process that unfolded could be more accurately described as a series of actions and reactions. Instead of formal negotiations, major players appeared to talk past one another in their attempts to legitimate their actions by appealing to primary audiences.

Moreover, the interaction between *professional* groups, hypothesized by Abbott's (1988) description of professional conflict, did not occur. In fact, the interaction crossed levels of analysis, inasmuch as the three primary actors in this process involved professional associations (i.e., the American Bar Association), organizations (the Big Five) and state agents (i.e., the Securities Exchange Commission. Indeed, in Chapter Four I describe situations in which representatives of professional associations in accounting and law compare notes regarding the best way of keeping regulatory control over large firms. In one sense, therefore, the multidisciplinary phenomenon has less to do with inter-professional rivalries and more to do with the emergence and growth of large organizations in the professions.

Field boundaries, therefore, change not by negotiation, but rather by combinations of internal erosion, external breaches and the inability of failing governance structures to maintain them.

This research has also contributed to our understanding of the characteristics of field boundaries. Field boundaries are complex and dynamic entities that exist in multiple dimensions. There is clearly a structural component to the boundaries of organizational fields. Changes to the spatial or structural characteristics of the field of legal services were defined by changes in the mobility of lawyers as they moved from law to accounting firms and by the appearance of new players in the provision of legal services as accounting firms established legal divisions. Most emphatically, structural changes were defined by the appearance of hybrid organizational forms in law, i.e., the 'captive law firm'. Changes to the structural aspects of the field of legal services were described and analyzed in Chapter Four.

There is also a symbolic or ideational component to organizational fields (Scott, 1994). That is, in addition to defining boundaries in a two-dimensional sense, like boundaries on a map, boundaries in organizational fields also demarcate separations in meaning systems and ideologies. These changes, described and analyzed in Chapter Five, included changes in the professional ideology of legal practice, re-conceptualizing legal services as having a smaller public service component and the introduction of new ideas about efficiency and managerial strategy in legal organizations. Field boundaries, thus, operate as much to keep out foreign ideas as they do to keep out foreign actors.

The combination of symbolic and structural properties of organizational fields make it difficult to define fields theoretically. That is, organizational fields often can be more clearly defined in an empirical sense than they can in a conceptual way. In the context of this research, the reason for this is now somewhat more obvious. Because organizational fields are nested in other organizational fields, the boundaries are always, somewhat contingent. In law, the boundaries between accounting and law have been subject to conflict for many years (Abbott, 1988). This boundary conflict can be represented (if drawn on a map) as 'horizontal' pressure. The field of legal services has also, historically, suffered boundary pressure from 'below' (i.e., from paralegals etc.) and from above (banks, trust companies etc.). The field is, similarly, embedded in related regulatory fields, involving professional associations, state regulators, capital market regulators and global trade authorities. This complex array of inter-related fields makes boundary maintenance a critical component of organizational fields.

A final contribution that this research makes to our understanding of organizational fields is that the complex and 'nested' nature of organizational fields, and the ongoing need for boundary maintenance, provides an inherent dynamic of institutional change. Some of these pressures are exogenous. The field of legal services, for example, exists in intimate relationship with several regulatory fields, including state regulators, professional associations, and international regulators. It also exists in close contact with adjacent professional fields, consumer groups and political advocacy groups. These fields were well represented at the American Bar Association Commission on Multidisciplinary Practice. They all exhibit some degree of influence on the 'target' field of legal services. Each group, however, represents a field level boundary that must be monitored, maintained and, on occasion, defended. Each boundary presents a pressure, albeit varied, for change within the profession.

Other boundary pressures are endogenous. As was demonstrated in Chapter Four, the field of legal services in North America is composed of distinct sub-communities of actors. Some of these sub-communities are defined on geographical bases, others by specialization of practice and still others by their socio-demographic composition. This internal diffraction denies the assumption that organizational fields are homogenous constructs. Rather, they are composed of a wide range of sub-communities of actors, with different histories and variable degrees of conformity to or acceptance of institutional structures and meaning systems. The pressures that these groups exert on the field also provide a potential dynamic of field level change.

In sum, boundaries play a critical role in changing organizational fields and the production of new organizational forms. Such boundaries must, however, be defined empirically rather than conceptually as they are in constant flux. Moreover, it is this flux or pressure placed on organizational fields that provides a dynamic of institutional change. Because fields are not homogenous constructs, the variation of degrees of structuration within the field, along with boundary pressures that originate outside the field provide an ever-present source of potential conflict and change. Finally, field boundaries are both symbolic and structural, and, in the process of empirically defining the boundaries of a given field, one must be sensitive to both aspects.

*How are new organizational forms legitimated?* This research makes three primary contributions to our understanding of organizational legitimacy. First, it deepens our understanding of the nexus between strategy and legitimation (Nielsen and Rao, 1987). Second, the research identifies language and *rhetorical strategies* as a key conceptual tool for understanding inter-organizational legitimation. Finally, the research explicates the important relationship between legitimacy and field level governance mechanisms. Each of these contributions is detailed in turn.

Although legitimacy has been characterized as a critical element in resource acquisition in inter-organizational relations (Pfeffer and Salancik, 1978; Suchman, 1995) it is not often recognized as a method of inter-organizational competition. Legitimation, however, was a primary competitive weapon used by professional associations in law, by the Big Five and by capital market regulators as they sought to define multidisciplinary practices as a new organizational form. Legitimation, thus, was a key institutional strategy in this process.

Institutional strategies are distinguishable from organization level strategies. They are, foremost, strategies of multi-level change and control. They are broader in scope than organizational level strategies, and differ in the degree of intention or deliberation. Because institutional strategies involve a broader range of actors and stakeholders than do organization level strategies, the degree of individual agency is constrained. That is, because multiple actors and audiences are engaged in institutional processes, no single actor or group has the power to solely determine socially constructed outcomes. Institutional strategies are therefore more emergent (Mintzberg, 1987) and less deliberate than organizational strategies. Ultimately, institutional strategies involve broad based appeals of legitimacy to multiple audiences as actors attempt to link changes in the rules of competitive interaction to broader social values.

The failure of the Big Five firms to legitimate their version of fully integrated MDPs in law illustrates the distinction between organization level strategies and institutional strategies. In promoting their version of multidisciplinary practice in law, the Big Five behaved as if they were executing an organization level strategy. They ignored several key audiences. They defied professional associations in law, at first refusing to appear before the Law Society of Upper Canada and the State Bar Association of New York, for example, when requested to do so. They ignored their own professional associations in accounting as they undertook the process of generating 'captive' law firms in Canada. And they acted defiantly with respect to the US Securities Exchange Commission, suggesting lawsuits and attempting to circumvent the regulator's authority with lobbying efforts directed at members of the US Congress.

These actions suggest a fundamental misunderstanding of two key components of institutional strategies of legitimacy. First, the Big Five did not appear to understand that legitimacy is a social construction and that, as such, it required the cooperation and support of the broadest possible base of significant stakeholders in the organizational field. Second, and perhaps most important, the actions of the Big Five suggest that they failed to understand that legitimation occurs as a result of attaching a 'normalizing' discourse to their actions at a societal level.

The strategy of the Big Five was to attach their legitimating discourse to the logic of economics and extol the consumer benefits of multidisciplinary practices. The fundamental flaw in this approach is that it offered only pragmatic legitimacy and anchored their legitimation efforts in a relatively small subset of the organizational field (i.e., corporate consumers). Professional associations and capital market regulators adopted a very different legitimation strategy. Foremost they established public forums designed to discuss the implications of the new organizational form at the broadest possible level. These forums included key groups and actors in the field and invited these participants to link attributes of the new organizational form to their particular interests, values and concerns. These forums initiated *legitimacy contests* or open opportunities to express opinions and share beliefs about preferences for changing distinct elements of the governance structure, the dominant organizational form and the distribution of resources within the organizational field.

Opponents of fully integrated multidisciplinary practices also employed a broader range of types of legitimacy. They used *moral* legitimacy to attach their normalizing discourse of lawyer controlled multidisciplinary practices to broader audience categories of the "general public" or "society". They also used forms of *regulative* legitimacy to anchor their claims to represent the interests of those not present at the public forums, including the disenfranchised and the poor. This broad based approach to legitimacy, ultimately, proved to be more successful. The essential element of this success was to anchor the legitimation strategy in a discourse that shaped the values and attributes of the new organizational form to conform to those held in broader society.

A second key contribution of this research is to identify the critical role played by language and *rhetorical strategies* in the process of legitimation. A typology of five distinct types of rhetorical strategies was identified in Chapter Five. Although subsequent research may challenge or add to this categorization, this research demonstrates that the rhetorical dimensions of legitimating discourse is a useful tool for analyzing processes of interorganizational legitimation. This is an important contribution to the field because, although institutional theorists generally accept the notion that meaning systems and symbolic action form an important aspect of institutions (Meyer and Rowan, 1977; DiMaggio and Powell, 1983; Scott, 1995), researchers have not yet developed a common analytical method or even a descriptive vocabulary for addressing issues of symbolic systems of categorization and meaning (Reuf, 1999).

Legitimation is an inherently symbolic activity, and language is the primary means of shaping legitimacy (Elsbach and Sutton, 1992; D'Andrade, 1995).

From the perspective of the researcher, language is the most visible expression of symbolic action. That is, underlying institutional logics, assumptions regarding ontological distinctions between taken-for-granted categorizations and differences in world-views are all embedded in language structure and use (Mauws and Phillips, 1995). Much of the literature about organizational legitimacy, however, takes the position that language is *about* something, rather than an object of empirical inquiry in itself. This research places the use of language in a central position of empirical inquiry by demonstrating the strategic potential of discourse in facilitating social change and in the legitimation of new organizational forms.

A final contribution that this research makes to our understanding of processes of organizational legitimacy is to underscore the connection between legitimation strategies and actors' interpretations of the dominant mode of governance in an organizational field. Chapter Five outlined the dimensional complexity of legitimacy as a theoretical construct. In addition to Suchman's (1995) observation of different generic types of legitimacy it is theoretically useful to define what aspects of an organization are being legitimated. In the case of multidisciplinary practices in law, various actors focused their legitimating efforts on different aspects of the organizational form, product or internal processes. It is also useful to differentiate types of legitimating audiences. In this case study, different consumer groups and state agents provided legitimating audiences. These were not passive audiences, however, and some forms of audience, most notably the US Securities Exchange Commission, became an aggressive actor in the debate about multidisciplinary firms. Finally, it is important to distinguish the means by which legitimacy is pursued.

Each of the actors engaged in the legitimation contest for the new organizational form adopted 'clusters' of activity that were consistent with their perception of the dominant mode of governance in the organizational field. Proponents of fully integrated multidisciplinary firms in law adopted a cluster of legitimating strategies consistent with their perception that a market based institutional logic prevailed. They emphasized the *product* of the new organizational form, directed their efforts toward large, corporate consumers as a primary audience and adopted a strategy of occupying the market place with a prototype of their intended new organization. Opponents, by contrast, focused on the *form* and potential problems of internal functions, addressed the state as their primary audience and focused on a legitimation strategy of being the first to institute legislative rules about the new form. Each group's cluster of legitimation activities and underlying institutional logic was reflected in their individual rhetorical strategies. Proponents adopted a teleological argument, using economic arguments about the inevitability of fully integrated practices. Opponents adopted an ontological rhetoric, assuming that markets were socially constructed and subordinate to professional and regulatory concerns.

Ultimately, the form of multidisciplinary practice that was produced by this legitimacy contest reflected elements of both market and professional controls. The mix of accounting-dominated and lawyer dominated multidisciplinary practices represents a 'hybrid form' (Greenwood and Hinings, 1988) of organizational change. The mutual interaction of market, state and professional governance mechanisms was reflected in the varied approaches taken by principle actors in their efforts to legitimate their particular version of multidisciplinary practice. The fact that both approaches to legitimacy appeared to have some influence, producing a hybrid form rather than one that emphasized purely market controls (i.e., full integration) or professional controls (i.e., 'pure' law firms), suggests that the 'shift' from a field dominated by professional controls to one dominated by market controls is not yet complete. Still, the material presented in Chapter Five supports the general observation that different legitimation strategies adhere to different configurations of social control or governance in an organizational field.

## Inducting a Model: Shifting Governance Mechanisms and Field Level Change

A primary objective of organizational research is the development and elaboration of formal theories. Case study research focuses on a single event or setting in an effort to understand organizational dynamics in depth (Eisenhardt, 1989). An important aspect of case study research is the potential to add novel insights to existing theory or to reframe existing perceptions (Bartunek, 1988). Eisenhardt (1989) has described this process as "emergent theory" through which inductive reasoning is used to construct explanatory models that describe theoretical insights achieved as a result of the case study. In this section I describe a model that summarizes the relationship between shifting governance mechanisms and change in a highly institutionalized setting.

In Chapter Two I described a tripartite typology of mechanisms of field level governance. Market, state and professional controls were proposed as generic constructs underpinned by distinct institutional logics that combined to form a triangular configuration of social control. Although there were no *a priori* assumptions about the dominance of any one mode of social control, it was suggested that across different organizational contexts, markedly different configurations of governance mechanisms might evolve. More significantly, it was suggested that, over time, a given organizational field developed a particular configuration of governance mechanisms in which one mode of governance predominated.

This was clearly the case in the legal profession in North America prior to 1980. The evidence presented in Chapter Four describes a field in which professional associations, supported by the state, used instruments of normative control to exert enormous influence over the field. This degree of control had multiple expressions, in which normative controls subjugated market mechanisms, including the suppression of competitive interactions and the establishment of a monopoly over the delivery of legal services. Perhaps the most visible expression of this control was the preferred organizational form for the delivery of legal services, a professional partnership in which only lawyers could hold positions of authority.

This governance configuration, depicted as the starting point in Figure 6.1 below, had an enduring and permanent status in the legal profession. In Tolbert and Zucker's (1994) terms, the governance structure had achieved full institutionalization or had become "sedimented". The notion of sedimentation, drawn from Berger and Luckman's (1966) stages of institutionalization, rests fundamentally on the historical continuity of a particular set of social practices, particularly on its survival across generations of organizational members. Sedimentation is "characterized both by the virtually complete spread of structures across the group of actors theorized as appropriate adopters, and by the perpetuation of structures over a lengthy period of time" (Tolbert and Zucker, 1994: 22). The domination of professional governance in law, at the onset of the time frame of this study, had achieved that degree of institutional definition, such that professional controls were taken-for-granted or had achieved the objective reality and hardness of a "social fact" (Durkheim, 1932).

The balance of Figure 6.1 outlines, schematically, the process by which the hard reality of this particular configuration of governance mechanisms was breached. It involves a four-stage process. In the first stage, endogenous forces, including demographic shifts and declining economics, operated to weaken the degree of professional controls. This allowed actors within the field to begin to question some of the taken-for-granted assumptions about the necessity and appropriateness of professional controls. It also weakened the authority of professional associations and diminished their ability to maintain field boundaries. In the second stage, exogenous actors, specifically the large accounting firms, took advantage of the weakened professional controls and weakened field boundaries by establishing captive law firms and escalating discourse about the need for multidisciplinary practices. In this phase, actors actively theorized (Strang and Meyer, 1993) about alternative organizational structures for the delivery of legal services. Competing models were produced and championed by distinct coalitions of actors. In the third stage, coalitions of actors engaged in a 'legitimacy contest' in which appeals were made to broader public coalitions regarding competing organizational forms. During this phase, alternative organizational forms were discussed in the context of competing ideologies of social control.

Figure 6.1
Component Stages of Deinstitutionalization

**Starting Point**
**Sedimentation**

- Governance mechanisms in equilibrium with professional controls dominant
- Field boundaries are well defined
- High degree of isomorphism of organizational **form.**

**Stage I**
**Breach of 'Exteriority**

- Endogenous changes weaken professional controls
- Actors question the 'taken for granted' status of existing configuration of governance mechanisms
- Field boundaries are weakened
- Pace of change is slow

**Stage II**
**Theorization**

- Exogenous changes (new entrants) provide catalyst for rapid change
- Field boundaries are highly permeable
- New entrants initiate the theorization of new configurations of governance and new organizational forms

**Stage III**
**Legitimacy Contest**

- Competing models of new organizational form are produced
- "pro" and "con" coalitions emerge and engage in an ideological struggle about appropriate mode of control

**Stage IV**
**Tentative Equilibrium**

- New configuration of governance mechanisms emerges and stabilizes relations within the field
- Tentative agreement on new organizational form

Actors representing all three modes of governance openly vied for control of the new organizational form. In the final stage, a tentative truce was established with a new configuration of governance mechanisms. Although professional controls are still apparent, they are considerably weakened and both state and market controls have established greater authority in the field. Each of these stages is discussed in turn below.

*Stage One: Breach of Exteriority:* Berger and Luckman (1966) use the term 'exteriority' to describe the degree to which social typifications achieve the status of social facts. Exteriority refers to the process by which patterns of social interaction come to be "experienced as possessing a reality of their own, a reality that confronts the individual as an external and coercive fact" (Berger and Luckman: 1966: 58). This was the status of professional controls in law before 1980. The assumption, for example, that only lawyers could engage in the practice of law and hold positions of authority in a law firm was an unquestioned fact. The assumptive domination of professional controls, similarly, was an external and coercive fact.

Between 1980 and 1989, however, a variety of endogenous changes in the legal profession weakened the legitimacy of professional controls. These changes, described in detail in Chapter Four, included changes in the demographic composition of the profession, regulative changes that diminished the monopolistic autonomy of professional associations and increasing internal competition between lawyers.

Demographic processes drive change at all levels of society (Blum and Schmidt, 1991). Amongst North American lawyers, a rapid increase in the number of lawyers, accompanied by an increasing heterogeneity in their demographic composition, provided the foundation for change. Young, marginalized practitioners were most likely to question the existing value structure that accepted the domination of professional controls. Increasingly, this group challenged professional controls and initiated regulatory changes that reduced the monopoly power of professional associations.

The dramatic increase in the number of practitioners also increased intra-professional competition in law. The weakened economic performance of lawyers placed in question the economic viability of professional controls.

The net result of these changes was to substantially weaken the institutionalized structure of professional governance. That is, the 'exteriority' of professional controls was breached. Actors began to question the appropriateness of habitualized behaviours within the field and began to experiment with alternative organizational forms. Questions regarding the appropriateness of professional controls and a growing interest in market controls were articulated by questioning whether the practice of law was more a business than a profession. Ultimately, the changes served to "tear the institutional fabric" (Barley, 1986) of professional controls and make institutionalized control structures in law both visible and contestable.

*Stage Two: Theorization:* The diminution of professional controls also reduced the ability of professional associations in law to maintain jurisdictional boundaries. That is, as the exteriority of professional controls was breached, field level boundaries became increasingly 'permeable' (Greenwood and Hinings, 1996) or 'plastic' (Fox-Wolfgram et al, 1998). The increased movement of lawyers and accountants across professional boundaries best illustrates the increased permeability of the field. Motivated by perceptions of decreased opportunities within the existing structural arrangements, significant numbers of lawyers began joining large accounting firms. Accounting firms, reciprocally, began to establish law firms, first in Europe and eventually in North America, albeit in the form of 'captive' organizations. Exogenous actors, most specifically the Big Five accounting firms, occupied a central role in this phase, as catalysts for or 'champions' of large-scale institutional change. As catalysts of change, the Big Five accounting firms engaged the field in the process of "theorizing" (Strang and Meyer, 1993) the viability of new organizational practices and forms.

Theorization is the rendering of ideas into "understanding and compelling formats" (Greenwood, Suddaby and Hinings, 2001). To be successful, catalysts of institutional change must accomplish two major tasks of theorization (Tolbert and Zucker, 1997). First, they must specify the problem, or articulate the "organizational failing" within the existing framework of field level control. In the context of multidisciplinary practices in law, this involved questioning the appropriateness of professional controls. Second, catalysts of institutional change must provide a solution and justify that solution. The model of accounting-dominated multidisciplinary practices promoted by the large accounting firms provided the proposed solution. Professional associations in law reacted by promoting an alternate solution in the competing organizational form of lawyer-dominated multidisciplinary practices. During the theorization phase the previously unquestioned attributes of professional governance became both visible and openly contested.

*Stage Three-Legitimacy Contests:* The third stage in the evolution of a new organizational form in law resulted in an extended debate regarding the comparative legitimacy of competing models of multidisciplinary practice. This *legitimacy contest* mobilized groups of actors, including consumer groups, state actors, accountants and lawyers, to engage in a public discourse about the appropriate expression of the proposed new form. The goal of the legitimacy contest was to gain control of, and change, the institutional rules of the game (North, 1990). The contest engaged participants on several fronts, the most prominent of which were the public hearings mounted by the American Bar Association and the US Securities Exchange Commission. The public forums established by the American Bar Association and the Securities Exchange Commission created an important opportunity for advocates and opponents of multidisciplinary practice to gauge the acceptability of their world-views with respect to other audiences. Such forums provided excellent sites within which actors could measure the effectiveness of their "institutional strategies" (Lawrence, 1999).

Legitimacy contests involve "opinions and beliefs in a population which represents preferences for changing some elements of the social structure and/or reward distribution in society" (McCarthy & Zald, 1977: 1218). Legitimacy contests involve coalitions of organizational actors seeking to redefine rule systems, property rights and resource flows. Legitimacy contests are underpinned by ideological struggles or "institutional wars" (Hoffman, 1999). That is, legitimacy contests involve symbolic and substantive practices designed to redefine governance configurations within the field. Such contests engage participants in a debate about the appropriate contribution of state, market and normative controls in defining organizational attributes.

In this context, the legitimacy contest involved a debate about the characterization of the product of the new organizational form as being, predominantly, a public or a private commodity. Those who characterized the product of multidisciplinary firms as having a significant public component, also advocated a governance configuration in which professional and state controls dominated. Those who characterized the new organizational form's product as having a dominant private component favoured market governance mechanisms in the field. This is akin to the ideological debates that surrounded the emergence of the field of radio broadcasting (Leblibici et al, 1991) or the field of art museums (DiMaggio, 1991).

Legitimacy contests are also underpinned by competition for power in the field. Actors who engage in a debate about the appropriateness of particular configurations of governance or social control are trying to "insert their interests into the mainstream of societal values and, hence to create or safeguard the legitimacy of their definition of the 'right' social order" (Miles, 1982: 23). Power, in this context, is embedded in the new rules that must necessarily emerge from a legitimacy context. Such institutional rules may come in a variety of forms. They may arise overtly, as coercive legislation enacted by state authorities. This occurred in Ontario and, subsequently, in other jurisdictions as professional associations raced to set up new standards for competition in a multidisciplinary age. Rules may also arise in a normative manner, in the form of reputation in the marketplace, for example. This was the tactic employed by the Big Five accounting firms in their plea before the Securities Exchange Commission when they argued that professional ethical norms ought to be replaced by each firms' reputation among clients and consumers. Each type of rule structure reflects different assumptions about the appropriate configuration of governance mechanisms in the field and grants varying degrees of power to professional associations or large conglomerate professional firms. In this way, institutional rules define legitimacy and grant power in an organizational field.

*Stage Four-Equilibrium:* At the conclusion of this study a tentative equilibrium has emerged. Multidisciplinary practices exist in both accounting and law and their form has received formal recognition in legislation. The new organizational form reflects a rather significant shift in governance mechanisms in the field in which the influence of professional controls, although still dominant, have been significantly weakened. More importantly, perhaps, the jurisdictional boundaries between law and accounting have been breached. The field will soon be characterized by the reciprocal influence of accountants in law firms and lawyers in accounting firms. We must await the long-term impact of this reality on the values and governance structure of the legal profession.

The foregoing stages represent the reverse of the schema of institutionalization described by Tolbert and Zucker (1996). That is, rather than describing the process by which habitualized typifications become sedimented and organizational forms in a field converge, it describes the process by which sedimented structures become disembedded from their social context, are made open to public scrutiny and organizational forms in a field diverge. It is not entirely clear how generalizable these observations might be, or how this particular sequence of events might be expressed in a different empirical context. The field was selected because it was thought to be representative of a highly institutionalized organizational field. Given this, one might hope to extend these observations to other, mature contexts, in which fields are highly structurated and there is considerable homogeneity in organizational form and practice.

Given these qualifications two important generalizations can be made. First, field level governance mechanisms play a critical role in understanding institutional change that produces organizational heterogeneity. Institutional fields are regulated through the reciprocal effects of market, state and normative institutional governance structures. In the literature this categorization often conflates normative and state controls under the term "institutional" controls and replaces the word "market" with the term "technical (Scott, 1994; 1995). Scott et al (2000) made this observation in the context of changes in the delivery of health care services in the San Francisco Bay area. This research showed a similar pattern of reduction in influence of professional controls and the growing influence of market controls. That study differed significantly from this one in the relative absence of an open and public debate about the relative merits of one configuration of governance mechanisms over another.

D'Aunno and Sutton (1989, 2000) also observed the intricate relationship between shifting governance structures and large-scale institutional change. In a longitudinal analysis of changes experienced by drug-treatment centers, the authors describe a shift in "dominant belief systems" as professional values and controls were displaced by economic controls. The authors also suggest that governance norms are expressed in conceptions of property rights in an organizational field, observing that "the more property rights in an organizational field consist of public rather than private ownership of firm assets, the less likely it is that divergent, radical change will occur" (2000: 684).

Consistent with this research, Scott et al (2000) and D'Aunno and Sutton (1989, 2000) observe that divergent change or organizational heterogeneity was accompanied by a shift from normative to market based governance. All three studies use professional fields as their empirical setting. This may, at least in part, explain the striking commonality in the sequence of dominant governance mechanisms as new organizational forms emerge. Alternatively, this study provides support for the more general observation that deinstitutionalization necessarily involves a causal sequence in which market controls supplant normative controls. It also suggests that economic shocks are a necessary prerequisite to institutional change.

A second set of general observations to be drawn from this research adds considerable analytical detail to the characteristics of field level governance structures and their evolution. This research identified three clusters or types of governance mechanisms. These three types of governance structures were linked to distinct sets of institutional logics or ideologies (Chapter 4). At their core, governance mechanisms are sets of rules that define the behaviour of actors in a field (Knight, 1992). These clusters of rules, underpinned by dramatically different values, beliefs and ways of viewing reality are expressed in different meaning systems or "archetypes" (Greenwood and Hinings, 1988) of institutional structure.

Change in organizational fields is a complex undertaking that involves multiple levels of change including dominant systems of social control, underlying belief systems and appropriate templates of organizing. This is an inherently 'messy' process that involves communal action and conflict. Simple causal relationships, therefore, ought to be mistrusted. While processes of institutional change can, for purposes of exposition, be reduced to simple analytical frameworks, we must resist the temptation to reduce complex and multifaceted casual processes to a single set of causal sources. Collective outcomes are not linear. New organizational forms represent compromises or, perhaps more accurately in this case, they represent truces.

## Avenues of Future Research

The conclusions outlined above suggest a number of issues and related questions that will provide the opportunity for further research. Three of these are of particular interest to me. First, I would like to assess how the constructs developed here might apply in different contexts or from the perspective of different actors in the same context. Second, the analytic focus in this research has operated at the inter-organizational level of analysis. I would like to see if the theoretical constructs developed in this research have any application *inside* organizations as opposed to between them. Finally, the events described in this study provide some interesting contradictions to existing theories about professionals and processes of professionalization. Each of these is detailed in turn.

Case studies suffer from an ongoing question about how well the findings can be generalized to different contexts. Clearly, this would provide a potentially fruitful line of future inquiry. It would be interesting to see whether the constructs developed here, such as governance mechanisms, legitimation contests and rhetorical strategies apply to different contexts of institutional change. This research, for example, has focused explicitly on change in a professional context in an effort to describe processes of change in a highly institutionalized field. Clearly, however, the professions are not the only field in which practices and forms have become highly institutionalized. The emergence of market economies in eastern European countries, for example, suggests one context in which highly institutionalized regulative governance mechanisms have given way to market based controls. It would be instructive to determine whether similar legitimacy contests occur in this context and whether the rhetorical strategies employed by those actors replicate the typology observed in this case.

More interesting from a personal perspective, however, is to examine the question of how well these constructs can be generalized to different perspectives of the same event. This study has focused quite explicitly on the emergence of multidisciplinary practices in law. The organizational form, however, has appeared in accounting (Greenwood, Suddaby and Hinings, 2001) and in medicine (Scott, et al, 2000). It is instructive to note how different the process by which multidisciplinary firms emerged in accounting. A related study (Greenwood, Suddaby and Hinings, 2001) observed several important differences. There was, for example, far less conflict and opposition to the actions of the Big Five from professional associations in accounting as these organizations expanded the range of professional services. Similarly, the stages of change outlined in this study differ in several important respects from stages of change described in accounting.

These observed differences serve to confirm the general observation made in this study that organizational fields are not homogenous in degrees of structuration. More importantly, it suggests a degree of spatial relativity amongst different actors in an organizational field, each of which experience similar events in very different ways. Thus, a comparative study of different subjective interpretations of the emergence of multidisciplinary actors, between accounting and law, would provide an interesting extension of this research.

A second avenue of future research addresses the same issue from different levels of analysis. This research has been conducted at a very 'macro' level of analysis by focusing on inter-organizational relations. It would be helpful to determine whether the constructs observed at this level of analysis are reproduced at the organizational level. That is, it would be interesting to observe whether rhetorical strategies of legitimation are reproduced *inside* multidisciplinary firms as lawyers, accountants and other professionals adjust to the new organizational reality of working together in cross-disciplinary teams. A case study of changing practices in professional work inside a single multidisciplinary firm, using an ethnographic methodology, might provide fresh insights.

Finally, this research provides some interesting contradictions to our existing theories of professions and professional organizations. Although the inter-professional conflict that led up to the creation of multidisciplinary practices is consistent with Abbott's (1988) thesis, the results are not. That is, Abbott (1988) suggests that, ultimately, inter-professional conflict leads to the domination of one professional group over another. The production of hybrid firms and multidisciplinary teams is, therefore, somewhat surprising. Moreover, the ongoing existence of lawyers, accountants and other professionals working in close proximity to each other, suggests that, over time, the reciprocal influences of these professional groups will dramatically reshape the context of professional work.

Abbott (1988) assumed that much of the conflict between professions would occur at the level of professional associations. That was not the case in this study. In fact, the conflict crossed levels of analysis with firms (i.e., the Big Five) directly challenging professional associations. One of the most striking changes to occur in the professions since Abbott's time is the dramatic increase in prominence of organizations in the professions. Most of our theoretical understanding of professions was constructed in an era when the individual was the appropriate unit of analysis. Most professionals practiced alone or in small partnerships and provided their services to individuals or small corporations. Today, professional services are, largely, delivered by large organizations and consumed by even larger corporate consumers.

The existence of multidisciplinary firms is one expression of that change. The sociology of professions remains relatively uninformed by organization theory. Multidisciplinary firms, with the ongoing interaction of multiple professionals in the context of large organizations, suggest that many of the theoretical understandings of professionals should be revisited.

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# Appendix 1A
## Organizational Fields: A summary of research

### A. Theoretical Papers

| Author/Year | Summary of theory | Institutional Focus | Primary Governance Mechanism |
|---|---|---|---|
| Warren (1967) ASQ | • Posits the interorganizational field as unit of study | | • |
| DiMaggio & Powell (1983) ASR | • Organizational fields are 'those organizations that, in the aggregate, constitute a recognized area of insitutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products.'<br>• Highly structured organizational fields provide a context in which individual efforts to deal rationally with uncertainty and constraint often lead, in the aggregate, to homgeneity in structure, culture and output | • Organizational homogeneity<br>• isomorphism | • |
| DiMaggio (1983) book | • organizational fields as a process of state expansion | • Organizational homogeneity | • State |
| DiMaggio (1986) book | • Blockmodel approach to organizational fields | • Organizational homogeneity | • |
| Scott (1994) book<br>Scott (1995) book | • organizational fields are intermediate between organizations and wider institutions<br>• the notion of field connotes a community of organizations that partakes of a common meaning system and whose participants interact more frequently and fatefully with one another than with actors outside the field.<br>• The length of time an organizational field has been in existence affects the stability and coherence of its structure | • Organizational homogeneity<br>• isomorphism | • |

**B. studies examining a change process in an organizational field**

| Author/Year | Summary of theory | Institutional Focus | Primary Governance Mechanism |
|---|---|---|---|
| Meyer, Scott, Strang and Creighton (1988) book | • study of US public school system<br>• describes structuration processes over time<br>• shows how schools become more similar | • isomorphism<br>• homogeneity | • State |
| DiMaggio (1991) book | • Study of US art museums<br>• Describes increasing structuration over time as traditional organizational model is replaced by a more contemporary model<br>• 'Structuration processes are historically and logically prior to the processes of insitutional isomorphism and are likely to entail quite different causal dynamics' | • heterogeneity<br>• creation of a new organizational form | • Professions or Normative |
| Leblibici, Salancik, Copay and King (1991) ASQ | • Study of US radio broadcasting industry from inception to present<br>• Suggests institutional change originates in the periphery of field<br>• Describes 'stages' of change | • Initial heterogeneity with movement toward dominant form | • Market |
| Brint and Karabel (1991) book | • Study of transformation of US two year community colleges from liberal arts focus to vocational training institutes | • Replacement of one form with another | • |
| Thornton (1995) book | • Study of US college publishing industry<br>• Describes the de-institutionalization of an entire field over 35 year period<br>• Small college publishers 'absorbed' by large multi-national conglomerates | • Disappearance of an organizational form | • Market |

| | | | |
|---|---|---|---|
| Fligstein (1985;1990) book/ASR | • Study of why large firms adopt the M-form structure<br>• 'The function of organizational fields is, first and foremost, to produce stability.<br>• "Organizational fields are set up to benefit their most powerful members because they formulate the rules and have the power to enforce them | • Adoption of a new form<br>• Heterogeneity | • Market and State |
| Davis, Deakman and Tinsley (1994) | • Studies changes in Fortune 500 companies<br>• Replacement of dominant conglomerate form with network form | • Replacement of one form with another | • |
| Scott, Mendel and Pollack (1996) | • Study of destructuration and restructuration in the US health care field<br>• 'The concept of an organizational field brings together notions of specific organizations, their vital exchange partners, or organizational sets, similar and competing organizations, or populations, and significant governance bodies, whether firm headquarters or regulative agencies<br>• structuration refers to changes over time in the number and type of actors, the nature and frequency of interactions and affiliations among these actors, the nature and extend to stratification and domination patterns that connect them, institutional logics that give meaning to actions and the boundaries that delimit the field.' | • | • |

## C. Studies examining the diffusion of an innovation throughout an organizational field

| Author/Year | Summary of theory | Institutional Focus | Primary Governance Mechanism |
|---|---|---|---|
| Baron, Dobbin & Jennings (1986) AJS | • Study of the diffusion of common personnel practices in US industry post WWII | • Isomophism<br>• homogeneity | • State |

| | | | |
|---|---|---|---|
| Burns & Wholey (1993) | • Study of adoption/abandonment of matrix management programs in US | • Isomorphism<br>• Homogeneity | |
| D'Aunno, Sutton & Price (1991) AMJ | • Study of diffusion of drug treatment units in US corporations | • Isomorphism<br>• Homogeneity | |
| Davis (1991) | • Study of adoption of poison pill takeover defence through inter-corporate network | • Isomorphism<br>• Homogeneity | |
| Delacroix, Jacques & Swaminathan (1991) ASQ | • Study of adoption of organizational practices in California wine industry | • Isomorphism<br>• Homogeneity | |
| Edelman (1990) | • Study of adoption of 'due process' in US corporations | • Isomorphism<br>• Homogeneity | • Normative |
| Galazkiewicz & Wasserman (1989) ASQ | • Study of adoption of corporate donation practices in US corporations | • Isomorphism<br>• Homogeneity | • Normative |
| Haunschild (1993) ASQ | • Study of diffusion of corporate acquisition processes amongst interconnected corporate boards | • Isomorphism<br>• Homogeneity | |
| Haveman (1993) ASQ | • Study of diffusion of decisions regarding entry into new markets by US Savings and Loans after deregulation | • Isomorphism<br>• Homogeneity | |
| Hoffman (1996) dissertation | • Study of diffusion of corporate 'greening' programs among US corporations | • Isomorphism<br>• Homogeneity | |
| Mezias (1990) | • Study of adoption of financial reporting practices amongst Fortune 200 corporations | • Isomorphism<br>• Homogeneity | |
| Palmer, Jennings & Zhou (1993) ASQ | • Study of late adoption of M-form by large US corporations<br>• Identifies "institutional, political and economic" factors as important causal agents | • Isomorphism<br>• Homogeneity | • Normative<br>• Market<br>• State |
| Scott & Meyer (1991) book | • Study of adoption of training programs in US firms and agencies | • Isomorphism<br>• Homogeneity | |
| Suchman (1994) dissertation | • Study of adoption of contractual norms in venture capital financing projects in Silicon Valley | • Isomorphism<br>• Homogeneity | |
| Tolbert & Zucker (1983) ASQ | • Study of adoption of corporate forms of municipal government in US over 55 year period | • Isomorphism<br>• Homogeneity | • Market<br>• State |

| | | | |
|---|---|---|---|
| Sutton, Dobbin, Meyer & Scott (1994) AJS | - Study of diffusion of 'legalistic' organizational practices in US corporations | - Isomorphism<br>- Homogeneity | |
| | - | - | |
| | - | - | |

## Appendix 3A
## Schedule of Oral and Written Testimony Before the American Bar Association's Commission on Multidisciplinary Practice

### A. Washington, D.C. Hearings – November 12-13, 1998

| Witness Name | Affiliation |
|---|---|
| Jim Holden | Steptoe and Johnson-Law Firm |
| Michel Gout | CCBE-corporation |
| Gerard Nicolay | PricewaterhouseCoopers |
| Susan Gilbert | Bar Association of District of Columbia |
| Les Shapiro | Padgett Foundation-Consumer |
| Karen D. Powell | Petrillo and Powell-Law firm |
| Alison Crawley | Law Society of England and Wales |
| Elizabeth Wall | PLC Wireless-Consumer |
| Ward Bower | Altman Weil-Consultant |
| J. Rob Collins | Law Society of Upper Canada |
| Stephen McGarry | Lex Mundi-International Legal Association |
| M. Peter Moser | ABA C'tee on Ethics and Professionalism |
| Steven A. Bennett | Banc One-Consumer |
| Andrew Scott | Law Institute of Victoria-Law Society |
| Linda Galler | Professor Hofstra University |
| T. O. Verhoeven | Oppenhoff & Radler-Law Firm |
| William Elliott | Kane Russel Coleman Logan-Law Firm |
| William Freigovel | Attorney Liability Society |
| Harold Levinson | American Association of Attorney-CPAs |
| Jan McDavid | ABA Antitrust Section |
| James R. Silkenat | Association of Bar of City of New York |

### B. Beverly Hills, CA Hearings – February 4-6, 1999

| Witness Name | Affilliation |
|---|---|
| Stefan F. Tucker | Chair, ABA Taxation Section |
| Lawrence J. Fox | Drinker Biddle & Reath |
| Kathryn Oberly | General Counsel – Ernst & Young |
| S. B. Sterrett | Vinson and Elkins-Law Firm |
| Neil Cochran | Dundas and Wilson-Law Firm |
| Lawrence M. Hill | White & Case-Law Firm |
| Dr. Hans Jugen Hellwig | VP Deutscher Anvaltverein-Consumer |
| Lynda Shely | State Bar of Arizona |
| Charles F. Robinson | Lawyer |
| James Turner | Executive Director of H.A.L.T. – |

| | |
|---|---|
| | consumer |
| Sidney Traum | American Association of Attorney/CPAs |
| Abbie F. Willard | Georgetown University Law Center |
| J. Dzienzowski | University of Texas School of Law |
| G. Mazet | French National Bar Council |
| J. W. Jones | APCO Associates Inc. – consumer |
| Simon Potter | Canadian Bar Association |
| Jay G. Foonberg | Bailey & Marzano – Lawyers |
| Larry Ramirez | Chair, ABA Genral Practice, Solo and Small Firm Section |
| Judge Judith M. Billings | Chair, ABA Committee on Pro Bono and Public Service |

### C. Washington D.C. Hearings, March 11 and 12, 1999

| Witness Name | Affilliation |
|---|---|
| Roger Page | Deloitte & Touche |
| Samuel DiPiazza | PricewaterhouseCoopers |
| I. Trieger and W.J. Lipton | Co-Chairs, National Conference of Lawyers and CPAs |
| William Bolger | National Resource Center for Consumers of Legal Services |
| Lora H. Weber | Consumers Alliance of the Southeast |
| William H. Hannay, III | Chair, International Law and Practice Section of ABA |
| Wayne Moore | Director-AARP-consumer group |
| Terry Cone | Cleary, Gottleib, Steen & Hamilton-law firm |
| Richard Miller | AICPA-Accounting professional association |
| Bernard Wolfman | Professor-Harvard Law School |
| J. P. McGonigle | Chair, ABA Standing Committee on Lawyers Professional Liability |
| L. Terry | Professor-Dickinson School of Law |

### D. Atlanta, GA Hearings, August 8-10

| Witness Name | Affilliation |
|---|---|
| Pam H. Schneider | Chair, ABA Section on Real Property, Probate and Trust Law |
| Steven Krane | New York State Bar Association |
| Delos N. Sutton | Union Internationale des Avocats |
| H. S. Garten | Chair, ABA Standing Committee on the Delivery of Legal Services |
| H. Batonnier | Ofrdre des Avocats a la Cour de Paris |
| J. S. Skilton | Chair, ABA Commission on IOLTA |
| Dan Brennan | Chair, Bar of England and Wales |

| | |
|---|---|
| John Craig | President, Inter Pacific Bar Association |
| Elisabet Fura-Sandstrom | President, Swedish Bar Association |
| Leo J. Jordan | ABA Tort and Insurance Practice Section |
| Ramon Mullerat | Council of Bars and Law Societies of European Economic Community |
| Samuel Bufford | Los Angeles County Bar Association |
| Patricia J. Kerrigan | Texas Association of Defense Counsel |
| James M. Seff | State Bar of California |
| Richard P. Campbell | International Association of Defense Counsel |
| Steve Hoffman | New York County Law Association |
| Jon Stockholm | Danish Bar and Law Society |
| Dr. Hans-Jurgen Hellwig | German Bar Association |
| G. Marc. Whitehead | Popham Haik-law firm |
| Geoff Provis | Law Council of Australia |

### E. New York Hearings, February 12, 2000

| Witness Name | Affilliation |
|---|---|
| Melinda S. Merk | ABA Young Lawyers Tax Committee |
| Bernard Wolfman | Harvard Law School |
| George Abbott | Aras Enterprises-Consumer |
| T. Debro | Consumers for Affordable and Reliable Services-consumer group |
| C. Niro | Illinois State Bar Association |
| Michael Cooper | Bar Association of the City of New York |
| Jay Eaton | Iowa State Bar Association |
| Walker Arenson | State Bar of Texas |
| Craig T. Enoch | Justice, Texas Supreme Court |
| Charles Brown | Utah State Bar Association |
| Robert E. Lutz | ABA International Law Section |
| Gary T. Johnson | Jones, Day, Reavis & Pouge-Law Firm |
| Anthony Davis | Moyles Giles O'Keefe |

### F. Miscellaneous Written Submissions

| Witness Name | Affilliation |
|---|---|
| Edward L. Summers | PhD. CPA |
| James L. Brown | Center for Consumer Affairs, University of Wisconsin-Milwaukee |
| Judge Frederick D. Pepple | Court of Common Pleas, Ohio |
| G. A. Tseliksis | Lawyer |

| | |
|---|---|
| Edward Lamar Taylor | Lawyer |
| M. H. Horner | President, T. Sawyer Camps-consumer |
| Scott Hart | Scott Hard Associates-law firm |
| Haydee Velazquez Tillotson | Tillotson Enterprises-consumer |
| Mark Philger | Americans for Competitive Telecommunications-consumer group |
| Lynn E. Turner | Chief Accountant, US Securities Exchange Commission |
| Jim Conran | President, Consumers First |
| David Swankin | Citizen Advisory Center |
| Albert foer | American Anti-trust Institute |
| Marna S. Tucker | Feldsman Tucher-lawyers |
| Patrick McCartan | Jones Day Reavis Po[illegible]e-law firm |
| Annonymous | The Consumer Allianc[illegible] |
| Al Sterman | Arizona Consumers Co[illegible]il |
| | Washington Legal Foundation-consumers |
| Lawrence J. Fox | Drinker, Biddle & Reath-Law Firm |
| | AICPA-accounting professional society |
| T. M. Stewart | Bar Association of San Francisco |
| Ethics 2000 Committee | Los Angeles county Bar Association |
| Ramon Mullerat | Lawyer, Spain |
| Robert W. Thom | Thom & Company |
| | Standing Committe on specialization, American Bar Association |
| Jose MaMarti | NALCO ESPANOLA S.A.-consumer |
| Damian Gisbert | Kelloggs, Spain-consumer |
| Robert W. Gordon | Yale Law School |
| Brian V. Howe | Council of Probate and Estate Planning Section, State Bar of Michigan |
| Ebonnie L. Simmons | National Association of Social Workers |
| Kenneth B. Crooks, Jr. | Metro Columbus Jr. League |
| S. D. Kaufer | National Association of Social Workers |
| Michael Baise | Indiana Farm Bureau-consumer |
| Clarence Hightower | Minneapolis Urban League-consumer group |
| Bob Snead | El Paso Chamber of Commerce |
| Sam H. Jones | Indianapolis Urban League |
| Jim Aiken | National Association of Social Workers |
| Richard A. Poppa | Independent Insurance Agents of New York |
| T. L. Frazier | Coalition of Wisconsin Aging Groups |
| Lester A. Roberts | NAACP-consumer group |
| Sue Elliot | Advocates for the Rights of Citizens with Developemental Disabilities |

| | |
|---|---|
| Ted Debro | Consumers ofr Affordable and Reliable Services |
| Joseph A. Lackey | Indiana Grocery and Convenience Store Association |
| Michael I. Prigoff | Lawyer |
| Melanie Ramey | Hospice Organization of Wisconsin |
| Jane Smith | National Council of Negro Women |
| Ronald Loy | President, Arthritis Foundation |
| Kari Klatt | Senior Health Program |
| John G. Farnan | National Lawyers Association |
| Dennis Walcott | New York Urban League |
| | |

## Reports and Documents (Arranged chronologically)

August, 1961. The Presidents speak: annual addresses of the presidents of the American Bar Association, edited by J. E. Holton. Chicago: American Bar Foundation.

1981. Commission on the Evaluation of Public Standards. Chicago: American Bar Association.

May, 1981 A Bit of History-MDP Roots Extend to 1980. American Bar Association

April, 1981. Report of the Working committee on ethics and professionalism (Kutak Commission). Chicago: American Bar Association.

May, 1981 The Kutak Commission of the American Bar Association, Final Draft of Model Rules, Chicago: American Bar Association

1986. Commission on professionalism: In the spirit of public service: a blueprint for the rekindling of lawyer professionalism. Chicago: American Bar Foundation.

1991. The state of the Legal Profession, 1990. Chicago: American Bar Association Young Lawyers Division.

January, 1999 Background Papers on Multidisciplinary Practices: Issues and Developments, ABA MDP Commission

January, 1999, Hypotheticals and Models, ABA MDP Commission

| | |
|---|---|
| January 8, 1999 | Report of the Special Committee on Multidisciplinary Practice and the Legal Profession, New York State Bar Association |
| June, 1999 | *Response to Report of ABA Commission on Multidisciplinary Practice,* New York County Bar Association |
| July, 1999 | Statement of Position on Multidisciplinary Practice, Association of the Bar of New York City |
| May 1999 | Report with Recommendations to the House of Delegates, Florida Bar Association |
| June 1999 | Special Committee on MDPs: Response to Report of the ABA Commission on Multidisciplinary Practice, New York County Lawyers Association |
| July 1999 | Comments of the American Antitrust Institute Regarding Recommendations of the ABA Commission on Multidisciplinary Practice, American Antitrust Institute |
| | Multidisciplinary Practice-What is It and Why Should we be concerned, Bar Association of San Francisco |
| | MSBA Weighs ABA's Report on Multidisciplinary Practice, Minnesota Bar Association |
| | A Multidisciplinary Primer, Massachesettes Bar Association |
| | Commission on Multidisciplinary Practice and Related Trends Affecting the Profession-Preliminary Report to Mid Year Meeting of PBA House of Delegates, Pennsylvania Bar Association |
| August, 1999 | Report to the House of Delegates, ABA Commission on Multidisciplinary Practice |
| September, 1999 | Task Force Formed to Face Future of Legal Profession: Multidisciplinary Practice Trend Brings Confidentiality, Conflict of Interest Concerns, North Carolina Bar Association |
| October, 1999 | Task Force Preliminary Report on the ABA Commission's Multidisciplinary Practice Proposal, State Bar of Texas |

| | |
|---|---|
| | Report of the OCBA Task Force on Multidisciplinary Practice, Orange County Bar Association |
| February 2000 | Tennessee Bar Association Multidisciplinary Task Force Report and Recommendations to the ABA House of Delegates, Tennessee Bar Association |
| March 2000 | Commission on MDPs-Draft Recommendation to ABA House of Delegates, ABA Commission on MDPs |

## Appendix 3B

## Schedule of Oral and Written Testimony Before the US Securities Exchange Commission Public Hearings on Auditor Independence

| Witness | Affiliation |
|---|---|
| Laurence H. Meyer | Governor, Board of Governors of the Federal Reserve System |
| Paul A. Volcker | Former Chairman, Board of Governors of the Federal Reserve System |
| Bevis Lonstreth | Debvoise & Plimpton-accounting firm |
| David A. Brown | Chair, Ontario Securities Commission |
| John C. Whitehead | Retired Chair, Goldman Sachs & Co. |
| Gary M. Pfeiffer | CFO, Dupont DeNemours and Co. |
| Judy Lewent | Merck & Co. |
| Kayla J. Gillan | California Public Employees Retirement System |
| Alan Cleveland | New Hampshire Retirement System |
| Ralph Whiteworth | Relational Investors, LLC |
| Jacqueline K. Wagner | Institute of Internal Auditors |
| William G. Biship | Institute of Internal Auditors |
| David Costello | National Association of State Boards of Accountancy |
| Dennis Paul Spackman | National Assoiciation of State Boards of Accountancy |
| Jo Ann Golden | New York Society of CPAs |
| Nancy Newman Lota | New York Society of CPAs |
| Tom Gardner | The Motley Fool Inc. |
| Bernard Blum | Blum Shapiro Financial Services |
| Domineck J. Esposito | Grant Thornton LLP |
| Thomas S. Goodkind | Arthur Andersen & Co. |
| Robert M. Morgenthau | District Attorney, County of New York |
| Jay W. Eisenhoffer | Grant & Eisenhoffer, CPAs |
| Charles R. Drott | CPA |
| Robert K. Elliott | AICPA |
| Barry Melancon | AICPA |
| Harold L. Monk | PCPS Executive Committee |
| Gordon Viere | Practice Group Advisory Committee AICPA |
| Gary Shamis | Practice of Accounting Advisory Committee |
| Robert Fox | New York State Board for Public Accountancy |
| Larry Gelfond | Colorado Accountancy Board |

| | |
|---|---|
| Baxter Rice | California State Board of Accountancy |
| Anne Ross | South Carolina State Board of Accountancy |
| Graham Ward | Institute of Chartered Accountants of England and Wales |
| Elise Neils | Brand Finance, PLC |
| Thomas Difazio | VirtualCom Inc. |
| Stephen G. Butler | Chairman, KPMG LLP |
| Don N. Kleinmuntz | University of Illinois at Urbana Champaign |
| Urton Anderson | University of Texas at Austin |
| Abraham Briloff | Baruch College |
| Jack Maurice | European Federation of Accountants |

## Other Reports and Documentation
(organized chronologically)

| | |
|---|---|
| June 2000 | *SEC Auditor Independence Proposal*<br>Press Release |
| June 2000 | *Remarks by Chairman Arthur Levitt, SEC*<br>Open Meeting on Proposals to Modernize Auditor Independence Rules |
| June 2000 | *Fact Sheet, SEC*<br>Rules on the Independence of the Accounting Profession |

## Appendix 3C

### Schedule of Documents From the Law Society of Upper Canada and Canadian Bar Association (organized chronologically)

| | |
|---|---|
| 1978. | Submissions to Professional Organizations Committee. Toronto: Law Society of Upper Canada Ministry of the Attorney General of Ontario. |
| | Working Paper #4. Professional Organizations Committee (POC).Toronto: Government of Ontario Publications. |
| 1980. | The Report of the Professional Organizations Committee. Toronto: Government of Ontario Publications. |
| October, 1997 | *Emerging Issues for the Legal Profession: Multidisciplinary Practices*, Canadian Bar Association |
| February, 1998 | *The "Futures" Task Force Interim Report of the Working Group on Multidisciplinary Partnerships*, Law Society of Upper Canada |
| June, 1998 | *Context-Approaching the Regulation of MDPs*, Professor W.A. Bogart |
| August, 1998 | *Multidisciplinary Practices-An interim Report of the International Practice of Law Committee*, Thomas Heintzman, Canadian Bar Association |
| August, 1998 | *Multidisciplinary Practices and Partnerships: Policy Options*, K. Roach and E. Iacobucci, Law Society of Upper Canada |
| September, 1998 | *The "Futures" Task Force – Final Report of the Working Group on Multidisciplinary Partnerships, Report to Convocation*, David Scott and Robert Armstrong, Co-Chairs, Law Society of Upper Canada |
| December, 1999 | *WTO adopts Disciplines on Domestic Regulation of the Accounting Sector*, World Trade Organization |

| | |
|---|---|
| February, 1999 | *International Practice of Law Committee Status Report on Multidisciplinary Practices,* Canadian Bar Association |
| February, 1999 | *Legal Issues Relating to Multidisciplinary Partnerships,* Wendy King, Canadian Bar Association |
| April 1999 | *WTO creates the Working Party on Domestic Regulation to Replace the Working Party on Professional Services,* World Trade Organization |
| April 30, 1999 | *By Law 25 and the "Futures" Task Force of the Working Group on Multidisciplinary Partnerships-Implementation Phase,* Law Society of Upper Canada |
| August, 1999 | *Multidisciplinary Professional Practices-A Consumer Welfare Perspective,* M. Trebilcock and L. Csorgo. |
| May, 1999 | *The Transformation of the Accounting Profession: The History Behind the Big Five Accounting Firms Diversifying into Law,* Colin Boyd on behalf of the Canadian Bar Association |
| May, 1999 | *Multidisciplinary Partnerships: Identification of Governance Issues,* Federation of Law Societies of Canada |
| June 30, 1999 | *Guide to Application to Enter into a Multidiscipline Partnership,* Law Society of Upper Canada |
| July, 1999 | *Notice to Profession: Call for Input,* Jim Varro, Law Society of Upper Canada |
| August, 1999 | *Speaking Points-Canadian Bar Association Annual Meeting,* World Trade Organization |
| August, 1999 | *Multidisciplinary Partnerships: Report to Delegates,* Federation of Law Societies of Canada |
| August, 1999 | *Striking a Balance-the Report of the International Practice of Law Committee on Multidisciplinary Practices and the Legal Profession,* Canadian Bar Association |
| August, 1999 | *MDPs: Report to Delegates,* Federation of Law Societies |
| September, 1999 | *Status Report of the Multidisciplinary Practice Task Force,* Law Society of Upper Canada |

| | |
|---|---|
| September, 1999 | *The Affiliated or 'Captive' Law Firm*, MDP Task Force-Law Society of Upper Canada |
| | "The transformation of the accounting profession: the history behind the big 5 accounting firm's diversification into law." Report prepared by C. Boyd for the Canadian Bar Association's International Practice of Law committee on Multi-disciplinary practices and the legal profession |
| January 2000 | *Draft Model Rule for MDPs,* Federation of Law Societies |
| February, 2000 | *Draft Model Rules, Multidisciplinary Practice*, Law Society of Upper Canada |

## Appendix 3D

## Schedule of Documents From the Law Society of Alberta (organized chronologically)

| | |
|---|---|
| 1990. | "Submission of the Law Society of Alberta to the Government of Alberta's Council on Professions and Occupations". D. Bishop. Edmonton: Government of Alberta Publications. |
| 1992. | *Report of the Futures Committee*. Edmonton: Law Society of Alberta. |
| 1993. | Brief to the Minister of Justice, the Honorable Mr. Edward Roberts, Q.C., Submitted by the Law Society of Newfoundland Re: Bill 55-An Act to Amend the Law Society Act, May, 1993. |
| January, 1995 | *Policy Statement on Professions and Occupations,* Government of Alberta |
| June 6, 1998 | *Resolution on the Regulation of MDPs adopted by Council of the International Bar Association,* International Bar Association |
| November 2, 1998 | *Correspondence from International Bar Association to Federation of Law Societies,* Klaus Bohloff, IBA President |
| February, 1999 | *Review Document from Barreau du Quebec-Report of MDP Committee on multidisciplinary between lawyers and accountants,* Barreau du Quebec |
| February 24, 1999 | *Internal Documents-Trade Policy, Intergovernmental Affairs,* Government of Alberta |
| April 21, 1999 | *MDPs-Identification of Governance Issues,* Keith R. Hamilton, Barrister and Solicitor |
| April 28, 1999 | *Correspondence between Donahue and Partners and Law Society of Alberta,* Doug Black, Donahue and Partners |
| May 1, 1999 | *Correspondence between Donahue and Partners and Law Society of Alberta,* Doug Black, Donahue and Partners |
| May 14 & 15 | *Notes from National Multidisciplinary Partnership Committee meetings at Montreal Quebec,* Susan V. R. Billington |

| | |
|---|---|
| May 20, 1999 | *What is Professionalism,* W. H. Hurlburt, paper presented to Law Society of Alberta Benchers Meeting |
| May 21, 1999 | *Memorandum to Benchers,* Pat Rowbotham, Chair of Multidisciplinary Practice Committee |
| May 26, 1999 | *Minutes of Meeting, Ancillary Business and Multidisciplinary Practice Committee,* Susan V.R. Billington |
| October 13, 1999 | *Multidisciplinary Practices: Proposals for the Way Forward,* Law Society of Alberta |
| January 27, 2000 | *Memorandum from the Multidisciplinary Practice Committee to Benchers of the Law Society of Alberta*, Susan V. R. Billington. |
| February 4, 2000 | *Report to Benchers by Multidisciplinary Practice Committee,* Law Society of Alberta |

## Appendix 3E
## Other Related MDP documentation
## (organized chronologically)

| | |
|---|---|
| 1977 | United States Congress Senate Subcommittee on Government Operations: Subcommittee on Reports, Accounting and Management. 95th Congress, 1st Session, 1977. The Accounting Establishment: A Staff Study. Washington, D.C. |
| 1984. | "Documents of Working Committee on professional Reform (Internal Document #1)", Barreau du Quebec. |
| May 1997 | "Report of Professional Regulation Task Force", *Law Society of New South Wales* |
| June 1998 | "President's Message-From the Stand", *Law Council of Australia* |
| October, 1998 | "Multidisciplinary Practices: Why? Why Not?", *Law Society of England and Wales* |
| July 1998 | "President's Page", *Australian Lawyer-The Newsletter of the Law Council of Australia* |
| August 1998 | "Legal Profession Advisory Council Reports: Multidisciplinary Partnerships", *Law Society of New South Wales* |
| October 1998 | "Media Releases and Speeches: Law Council Must continue National Professional Reform Push-President", *Law Council of Australia* |
| November 1998 | "President's Message-A Rationale for Reform", *Law Council of Australia* |
| November 1998 | "Submission to ABA Commission on MDPs", *Andrew Scott-President Law Institute of Victoria* |
| December 1998 | "Policy Statement on Multi-disciplinary Practices", *Law Council of Australia* |
| January, 1999 | "Big Four and the Legal Profession: An Excercize in Futility?", *Managing Partner* , Steven J. McGarry |
| February 1999 | "President's Message-Special Message from the President", *Law Council of Australia* |

| | |
|---|---|
| | "Who's Afraid of the MDP?", *Managing Partner* |
| April 1999 | "President's Message-Planning Conference Establishes Priorities", *Law Council of Australia* |
| May/June 1999 | "Practice Special: LLPs and MDPs-Setting up shop as a multi-disciplinary practice", *Ontario Lawyers Gazette.* |
| October, 1999 | "The Case for MDPs: Should MDPs be Banned or Embraced?", Ward Bower. |
| | "Law Practice in the 21st Century: Assisted Negotiation and Multidisciplinary Problem Solving." Ann L. MacNaughton. |
| | "Multidisciplinary Practices: Proposals for the Way Forward", *Law Society of England and Wales.* |
| | "Multidisciplinary Practice: Strategic Response to Transformation of Global Business Reality." Ann L. MacNaughton. |
| | "The Accountants are coming: A practical Lawyers survival Kit" Michael Simmons. |
| | "Press Release: Ernst & Young Will Finance Launch of Law Firm in Special Arrangement", *Ernst & Young (US): Ian Doddington* |
| September 1999 | "President's Message-A Successful Mission", *Law council of Australia* |
| November, 1999 | "Going Global: The Accountants and their Law Firms", *Lexpert.* |
| | "Position of the CCBE on Integrated Forms of Co-operation between lawyers and persons outside the legal profession, *Council of the Bars and Law Societies of the European Community (CCBE)* |
| November/IDecember, 1999 | "Here come the bean counters: A primer on multidisciplinary practice." *Canadian Lawyer* |
| December, 1999 | "The winds of change", *National* |

| | |
|---|---|
| | "Multidisciplinary Practices: Progress Report", *Law Society of England and Wales.* |
| | KPMG Press Release. December, 1999. See http://www.us.kpmg.com |
| February, 2000 | "Multidisciplinary Partnerships: The Future is Here." *Canadian Lawyer* |
| February 2000 | "The Canadian Lawyer Survey of the Top 10 Law Firms in Canada", *Canadian Lawyer* |

## Appendix 3F
## Interview List

### 1. Normative/Professional Governance Sector:

| Informant Name | Title | Firm |
|---|---|---|
| Steve Glover | Chief Executive Officer | Institute of Chartered Accountants of Alberta |
| Peter Freeman | Secretary | Law Society of Alberta |
| Pat Rowbotham | Chair (Past) | Committee on Multidisciplinary Practice-Law Society of Alberta |
| Gordon Flynn | Chair (Past) | Committee on Multidisciplinary Practice-Law Society of Alberta |
| Terry Clackson | President (Past) | Law Society of Alberta |
| Don McLeod | Secretary | Law Society of Alberta |
| Susan V. Billington | Staff Lawyer | Committee on Multidisciplinary Practice-Law Society of Alberta |
| Karl Warner | President | Law Society of British Columbia |
| Jim Matkin | Executive Officer | Law Society of British Columbia |
| Bill Hurlburt | Emeritus | Law Society of Alberta |
| B. Rutherford | Director | Canadian Institute of Chartered Accountants |
| Joanna Maund | Vice President | Institute of Chartered Accountants of Ontario |
| Paul McLaughlin | Practice Management Advisor | Law Society of Alberta |
| Barry Vogel | Practice Management Advisor | Law Society of Alberta |

### 2. State Governance Sector

| Informant Name | Title | Firm |
|---|---|---|
| Dennis Gartner | Assistant Deputy Minister | Alberta Labour-Professions and Occupations |
| Brenda Johnson | Director | Alberta Labour-Professions and Occupations |
| Eric Spink | Vice President-Enforcement | Alberta Securities Commission |

### 3. Market and Target Organization

| Informant Name | Title | Firm |
|---|---|---|
| Doug Black | Managing Partner | Donahue Ernst & Young-Calgary |
| Pat Donahue | Managing Partner | Donahue Ernst & Young-Toronto |
| Rick Cormier | Managing Partner | Ernst & Young-Edmonton |
| Ralph Neville | Managing Partner | BDO Dunwoody-Toronto |
| David Stewart | Director | Alberta Centre for Accounting Ethics |
| Robert Long | Managing Partner | Ernst & Young-Toronto |
| Gordon Campbell | Managing Partner | Ladner Downs-Vancouver |
| R . Roth | Managing Partner | Milner Fraser-Edmonton |
| W. Shaw | Administrative Partner | Blake Cassels-Calgary |
| W. Rice | Managing Partner | Bennett Jones-Calgary |

## Appendix 3G
## Informed Consent Form for Interviews
## (on Faculty of Business Letterhead)

Thanks for your participation in my dissertation research, "Field level governance and the Emergence of New Organizational Forms: The case of multi-disciplinary practices in the legal profession." I am trying to understand the processes by which multi-disciplinary partnerships (MDPs) are becoming established in the legal and accounting professions. The research is part of my PhD studies in the Department of Strategic Management and Organization at the Faculty of Business at the University of Alberta.

The proposed interview will take between forty and sixty minutes. I would like to record the interview, but if you prefer to not have the interview recorded I will simply take notes of our conversation. If you agree to have the interview recorded, but during the course of our conversation, decide that portions of the interview should not be recorded, I will turn the tape recorder off. If you would like to withdraw from the interview at any time you are free to do so. You are free to refuse to answer any question.

Your comments will be treated in strict confidence and will not be reported to any other person in this or any other organization, except my dissertation supervisor and members of my dissertation committee. Once the notes or tapes of our interview have been transcribed I will provide you with a copy of the transcription and you are free to comment on the accuracy of, or clarify any part of the transcript.

The transcript data will be kept in a locked and secure file to which only I and my dissertation committee will have access. The information will be used in academic publications, but will not identify you, your firm or organization. Any quotes or references which might identify you will not be used without first obtaining your permission. I will keep the research data for ten years after completion of my dissertation.

If you have any questions or concerns about this study at any time you may contact me or Professor David Cooper, Chair of the Research Ethics Board of the Faculty of Business, at the address and telephone numbers provided below.

Roy Suddaby
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David Cooper
Research Ethics Board
Faculty of Business
University of Alberta
Edmonton, Canada
780-492-2797

## Individual Consent Form

This study was explained to me by Roy Suddaby.

I agree to take part in this study.

Signature of Participant Date

Printed Name of Participant

I believe that the person signing this form understands what is involved in the study and has voluntarily agreed to participate.

Roy R. Suddaby Date